SUPREME COURT OF THE UNITED STATES.

No. 88.

WILLIAM R. HANSON, JOSEPH L. MOSS, ISAAC PHILLIPS, JOSEPH M. MOSS AND DAVID SAMUEL, PLAINTIFFS IN ERROR,

VS.

LESSEE OF JOHN H. EUSTACE.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE EASTERN DIST. OF PENNSYLVANIA.

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S. D. Langtree, Print.

LESSEE OF EUSTACE,
vs.
HANSON, *& al.*

Writ of error.

UNITED STATES, *sct:*

[L. S.] The President of the United States, to the Judges of the Circuit Court of the United States, holden in and for the Eastern District of Pennsylvania, in the Third Circuit, greeting:

Because, that in the record and process, and also in the rendering of judgment in a suit before you, or some of you, between Richard Smith, lessee of John H. Eustace, a citizen of the State of Virginia, plaintiff, and William R. Hanson, Joseph L. Moss, Isaac Philips, Joseph M. Moss and David Samuel, defendants, a manifest error has intervened to the great damage of the said William R. Hanson, Joseph L. Moss, Isaac Philips, Joseph M. Moss and David Samuel, as in their complaint has been stated. And as it is just and proper, that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf:

You are hereby commanded, that if judgment thereof be given, then under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the Chief Justice and the Associate Justices of the Supreme Court of the United States, on the second Monday in January next, at the city of Washington, being the seat of National Government, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States at Washington, this fifth day of October, in the year of our Lord eighteen hundred and forty-one, and of the independence of the United States the sixty-sixth.

FRA. HOPKINSON, *Clk. Ct. Ct.*

Allowed, by

HENRY BALDWIN.

LESSEE OF EUSTACE,
vs.
HANSON, *& al.*

Citation in Writ of Error.

UNITED STATES, *Eastern District of Pennsylvania, sct:*

To Richard Smith, a citizen of the State of Virginia, lessee of John H. Eustace, a citizen of the State of Virginia:

Whereas, by a writ of error issuing out of the Supreme Court of the United States, directed to the Judges of the Circuit Court of the United States, holden in and for the Eastern District of Pennsylvania, in the Third Circuit, wherein William R. Hanson, Joseph L. Moss, Isaac Philips, Joseph M. Moss and David Samuel, citizens of the State of Pennsylvania, are the complainants; the said judges are directed to send the record and process of a certain suit with all things concerning them, so that the same may be had before the Chief Justice and Associate Justices of the Supreme Court of the United States, on the second Monday in January next, at the city of Washington, being the seat of National Government, in which suit you, Richard Smith, lessee of John H. Eustace, are original plaintiff, and the said William R. Hanson, Joseph L. Moss, Isaac Phillips, Joseph M. Moss and David Samuel, are defendants, in a plea of trespass and ejectment; that the record and process aforesaid being inspected, they, the said Supreme Court, may cause to be done thereupon, what of right ought to be done. And the said William R. Hanson, Joseph L. Moss, Isaac Philips, Joseph M. Moss and David Samuel, having made an assignment of errors, and given good and sufficient security that the plaintiffs in error shall well and truly prosecute his said writ of error to effect, and answer all such damages and costs, as upon an affirmance of the judgment of the said Circuit Court may be adjudged to the respondent in error:

You are hereby cited to appear (if you see cause) at the said Supreme Court, at the time and place aforesaid, to answer to the said writ of error, and the errors assigned by the said William R. Hanson, Joseph L. Moss, Isaac Philips, Joseph M. Moss and David Samuel.

Given under my hand and seal, this fifth day of October, one thousand eight hundred and forty-one.

HENRY BALDWIN. [L. S.]

CITY OF PHILADELPHIA, *ss:*

Thomas G. Van Buren being duly sworn according to law, doth depose and say, that he served the within citation upon John H. Eustace, the defendant in error, on the 28th day of November, 1841,

by exhibiting to him the original thereof, and by leaving with him a true copy of the same.

THOS. G. VAN BUREN.

Sworn and subscribed before me, January 8th, 1842.

JOHN COOK, *Ald'n.*

Service accepted.

FALLON, *for def't in error.*

Pleas before the honorable the Judges of the Circuit Court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, at Philadelphia, of October sessions, A. D. 1839.

It is thus contained:

William R. Hanson, Joseph L. Moss, Isaac Phillips, Joseph M. Moss and David Samuel, citizens of the State of Pennsylvania, were attached to answer Richard Smith, a citizen of the State of Virginia, lessee of John H. Eustace, a citizen of the said State of Virginia, of a plea, wherefore with force and arms, they entered into all that certain lot or piece of ground, situate on the north side of Chesnut street, at the distance of forty-two feet westward from the west side of Schuylkill Seventh streets, in the city of Philadelphia, State of Pennsylvania aforesaid, containing in front or breadth on said Chesnut street, sixty-six feet; and extending in length or depth, one hundred and fifty-eight feet, to a certain twenty feet wide street, called Linden street; bounded east and west by ground granted to William B. Fling on ground rent; north by said Linden street; and south by the said Chesnut street; together with all the rights, remedies and incidents thereunto belonging, or in any wise appertaining, of the value of one thousand dollars.

And also all that certain lot or piece of ground, situate on the westerly side of South Sixth street, between High and Chesnut streets, in the said city of Philadelphia, containing in breadth on the said Sixth street, twenty-five feet, more or less, and of that breadth extending in length or depth westward to Decatur street, one hundred and seventy-five feet, more or less, with the appurtenances. On the premises is erected a four story substantial brick messuage, extending the entire depth of the lot from Sixth to Decatur street, narrowing on the centre so as to leave a small side yard, of the value of one thousand dollars, with the appurtenances in the district aforesaid; which said John H. Eustace demised to the said Richard Smith for a term which is not yet expired, and ejected him from his said farm, and other wrongs to him did, to the great damage of the said Richard, and against the peace of the United States, &c.

And, whereupon, the said Richard, by Christopher Fallon, his attorney, complains, that, whereas, the said John H. Eustace, on

the twentieth day of September, in the year of our Lord one thousand eight hundred and thirty-nine, at the district aforesaid, had demised to the said Richard the tenements aforesaid, with the appurtenances, to have and to hold the same with the appurtenances, to the said Richard and his assigns, from the twentieth day of September, in the year one thousand eight hundred and thirty-nine, to the end and term of two years, from thence next following, and fully to be complete and ended. By virtue of which demise the said Richard entered into the said tenements, with the appurtenances, and was thereof possessed; and the said Richard, being so possessed thereof, the said William R., Joseph L., Isaac, Joseph M. and David, afterwards, that is to say, on the twentieth day of September, in the year one thousand eight hundred and thirty-nine, with force and arms, that is to say, with swords, staves and knives, entered into the said tenements, with the appurtenances, which the said John H. Eustace demised to the said Richard in form aforesaid, for the term aforesaid, which is not yet expired, and ejected the said Richard out of his said farm, and other wrongs to him did, to the great damage of the said Richard, and against the peace of the United States; whereby the said Richard saith that he is injured and damaged to the value of twenty thousand dollars.

And the said Richard avers, that the aforesaid amounts are of the value of twenty thousand dollars; and thereupon he brings suit, &c.

And, thereupon, the said William R. Hanson, Joseph L. Moss, Isaac Phillips, Joseph M. Moss, David Samuel, by Joseph R. Ingersoll, Esquire, their attorney, come and defend the force and injury, when, &c., and say, that they are in no wise guilty of the trespass and ejectment aforesaid, as the said Richard Smith above complains against them; and thereof they put themselves upon the country, and the said Richard Smith doth the like. Therefore, let a jury thereupon come before the judges aforesaid, at Philadelphia aforesaid, on the eleventh day of April next, by whom, &c., and who neither, &c., to recognize, &c., because as well, &c. The same day is there given to the parties aforesaid, then and there, &c.

On which said eleventh day of April, in the year of our Lord one thousand eight hundred and forty, come the parties aforesaid, by their attornies aforesaid, and further day is given to the parties aforesaid, until the twelfth day of October next, then and there, &c. Therefore, as before, let a jury come thereupon before the said judges, on the said twelfth day of October, by whom, &c., and who neither, &c., to recognize, &c., because as well, &c. The same day is then given to the parties aforesaid, then and there, &c.

On which said twelfth day of October, A. D. one thousand eight hundred and forty, come the parties aforesaid, by their attornies aforesaid.

Afterwards, to wit, at the same session of the said court, holden at Philadelphia aforesaid, before the judges aforesaid, on the twenty-eighth day of October, in the year last aforesaid, come the parties aforesaid, by their attornies aforesaid; and the jurors of the jury aforesaid being called, likewise come, to wit: Jacob Shick, George W. Page, George W. Tryon, Lewis Ryan, Alexander W. Reed, James Hutchinson, Frederick Schober, Jeremiah James, John M. Bockins, James H. Hutchinson, Thomas Maguire and Joshua Bethell, who are duly impannelled, returned, elected, tried and sworn, or affirmed to speak the truth of the matter within contained.

Be it remembered, that at the October sessions of the Circuit Court of the United States, for the eastern district of Pennsylvania, in the year of our Lord one thousand eight hundred and thirty-nine, came Richard Smith, a citizen of the State of Virginia, lessee of John H. Eustace, a citizen of said State of Virginia, and impleaded William Stiles, a citizen of the State of Pennsylvania, with notice to William R. Hanson, Joseph L. Moss, Isaac Phillips, Joseph M. Moss and David Samuel, and Catharine W. Yohe, citizens of the same State, in a certain action of ejectment, in which the said plaintiff declared (prout narr.) and the said defendants severally pleaded (prout pleas;) and thereupon issue was joined between them.

First.—And afterwards, to wit, at a session of the said court holden on the twenty-eighth day of October, in the year of our Lord one thousand eight hundred and forty, at the city of Philadelphia, in the district aforesaid, before the Honorable Henry Baldwin, one of the justices of the Supreme Court of the United States, and the Honorable Joseph Hopkinson, the aforesaid issue between the parties came to be tried by a jury of the district aforesaid, for that purpose duly impannelled (prout list of jurors,) at which day came as well the said plaintiffs as the said defendants, by their respective attorneys; and the jurors of the jury aforesaid impannelled to try the said issues, being also called, came, and were then and there in due manner chosen, and sworn and affirmed, to try the said issues; and upon the trial, the counsel for the said plaintiff, to maintain the said issue on his part, gave in evidence the record of a deed, George H. Thompson and wife to Isaac Phillips, (prout same hereto annexed marked No. 1.)

Second.—The record of a release from James C. Fisher and wife to Isaac Phillips, (prout same hereto annexed, marked No. 2.)

Third.—And then examined one Conrad Albright, who, having been duly sworn, deposed as follows:

I am the tax collector for Chestnut ward, and have been for ten or eleven years. I believe that the American House is in Chestnut ward; I have collected the taxes on this property ten or eleven years; I received the taxes in 1836 (as it appears from the memo-

randum in my hands,) from Isaac Phillips; I remember that I got them from Isaac Phillips on the 27th of Aug[illegible]t of that year; in the year 1837 I received the taxes at the counting house of Moss and Phillips in some alley near Front street—but who gave them to me I can't tell; the alley is between Chestnut and Walnut streets; I don't know any thing about who were the firm; I think that Joseph L. Moss was there; I called frequently; he generally was there; I think that Joseph L. Moss once paid me; the names of Phillips and Moss, or of Moss and Phillips were, I think, on the window shutter; Moss, or one of his men, paid me; they talked about assignees at one time; I did not care who paid the taxes, provided I got them.

Cross-examined.

I think Mr. Phillips either paid me the taxes, or ordered them to be paid to me; they were paid at his counting house by him or some one else—one of the men; I don't recollect Joseph L. Moss paying but once; Isaac Phillips paid me at one time; he paid me in checks; I don't know when; I went up stairs; I think I had seen Phillips before he paid me; I had no particular acquaintance with him.

Fourth.—Exemplification of the record from the District Court for the city and county of Philadelphia, in the case of the Farmers' Bank of Virginia, *vs.* Isaac Phillips and Joseph L. Moss, late trading under the firm of R. & I. Phillips, to Dec. term, 1837, No. 873; (prout same hereto annexed, marked No. 4.)

Fifth.—Deed Poll, from the Sheriff of the city and county of Philadelphia, to C. Fallon, 22 June, 1839; (prout same hereto annexed, marked No. 5.)

Sixth.—Deed from C. Fallon and wife, to John H. Eustace, 1839; (prout same, hereto annexed, marked No. 6.)

Seventh.—Daniel Saint, a witness on the part of the plaintiff, being sworn, deposed as follows:

I was acquainted with R. & I. Phillips; I leased the American House from the firm of R. & I. Phillips, in 1834 or 5, I think, or from Moss & Phillips; Robert Phillips was then deceased. I always considered Robert Phillips as the head of the firm of R. & I. Phillips, during his life time; Isaac Phillips, I presume, was the other member of the firm. After the death of Robert Phillips, I don't know that the firm was continued; I had no transactions with the firm except leasing the house; I took a written lease drawn by Joseph L. Moss; I gave my lease to Mr. William Badger, attorney for Peter Wager. This is a copy of the lease as near as my memory will enable me to recollect. If this is the paper I gave to Mr. Badger, it is the paper I received from the counting house of R. & I. Phillips. There was an original signed by Mr. Moss; it was drawn by Moss, and I believe signed by him, and the copy of that

was given to me—to the best of my recollection, it was signed as this paper was signed. I went into possession under the lease signed by R. & I. Phillips. I paid rent for the premises; the first year I paid no rent, after that I did. I bought furniture to the amount of a thousand dollars, by order of R. & I. Phillips; Isaac Phillips paid for it. There was not custom enough to enable me to pay. After the first year I paid rent in Phillips and Moss's counting house, to their chief clerk, to Mr. Eyre, their cashier—to the best of my knowledge and belief; it was in Front street, below Chesnut. This is the Mr. Moss, (Joseph L. Moss;) I don't know that Mr. Eyre is deceased; I think it was George L. Eyre. When I first applied to R. & I. Phillips for the house it was finished; it had been finished for some time before any one occupied it. I was the first occupant of the house after it was finished; I can't say positively that it was finished either before or after the death of Robert Phillips. I have looked for the receipt given for the rent, but could not find it. I have lost some of my books—it may be, in all probability, somewhere about the house. I have been insolvent; I do not think my books and papers were lost at the time of my insolvency; I gave all my books and papers at that time to William Badger, the lawyer.

Cross-examined.—R. & I. Phillips were partners, as other persons, in merchandize. I know nothing about their partnership concerns. I presume Moss & Phillips were partners in merchandize; they may have been land or water brokers.

Eighth.—Alexander Quinton being sworn for plaintiff, deposed as follows:

I am the present occupant of the American House; there is a written lease not yet signed, owing to the neglect of the parties, I believe. Mr. Hanson, of Front street, is my landlord; he has built a new house in George street.

Cross-examined.—I went into the house in July, 1840. Captain Blackstone and wife were there before me—Mr. Yohe's son-in-law; Mrs. Yohe, I believe, occupied the premises; I understood so from Mr. Hanson; I did not understand from Mr. Hanson from whom she rented the premises—I understood from Hanson, that Mrs. Yohe had a lease that would not be taken off her hands by him, until the house was rented.

Ninth.—Daniel McCurdy, affirmed for plaintiffs, deposed as follows:

I am a tax collector for middle ward, and have been so for twenty years; the Chestnut street property is in that ward. I received the taxes, to the best of my recollection, from R. & I. Phillips, for the years 1836 and following; I am not certain for more than one year or two; I received them in Gray's alley, from the counting-house of Moss, & Co.; Joseph M. Moss was in the counting-house at the time of the transaction between the clerk and myself; Joseph M. Moss was the most active of the concern. I don't know to whom

I gave the receipts in the years 1836 and 1837; I think I gave the receipts in the name of R. & J. Phillips.

Cross-examined.—I can't say that the firm in Gray's alley was not S. Moss & Son. I received information that my taxes would be paid there, without explanation; one of the other collectors told me so. I can't recollect the form of the receipts; they were not received from R. & I. Phillips.

Tenth.—C. Fallon, Esquire—affidavit waived—states, at the sheriffs sale under which we claim, Mr. Ingraham gave notice that he appeared for Joseph M. Moss and David Samuel, the assignees of R. & I. Phillips, defendants. He gave notice that the properties No. 4 and 5, the objects of this suit, belong to the assignees of I. Phillips & Joseph L. Moss, in trust for the benefit of creditors. Also, a notice with respect to the property No. 8. Mr. Henry M. Phillips, also, read a notice that he appeared. Witness was here interrupted.

Qu. Was any notice given Henry M. Phillips, and what was it?

Objected to, and overruled.

Qu. Did Mr. Phillips appear and act for any of the parties to this suit?

Ans. He could not act without appearing; he did act for David Samuel and Joseph M. Moss.

Qu. What was his action on that occasion?

Ans. He purchased part of the premises put up for sale, and described in the writ as the attorney of Joseph M. Moss & David Samuel, assignees; and more than that, as an answer to the question, I will state that Mr. Phillips and myself stood almost along side of each other at the sale, and that we bid against each other for, I believe, every property put up for sale, and we alone bid aganist each other; Phillips was the only bidder besides myself, and in bidding for the property he did not declare for whom he acted as agent, until after some of them were knocked down to him; and then he signed himself as agent for the assignees, individually, Joseph M. Moss and David Samuel, for one of the properties. He bid for every property, and I bid against him; Joseph M. Moss was present at the sale. After Mr. H. M. Phillips and Mr. Ingraham read their notices, I asked that copies might be given to the *the* deputy sheriff, and that has not been done; I understood Mr. Phillips to decline giving a copy of the notice. Having had a good deal of trouble, I made a memorandum on the night of the sale. Mr. Eustace is a resident of Virginia.

Cross-examined.—Each of the properties were bid for by yourself, (H. M. Phillips;) H. M. Phillips did not say on the evening of the sale, that he appeared for the assignees of R. & I. Phillips. The notice read by H. M. Phillips was as to three properties in Arch street. He appeared as the agent of the trustee of Isaac Phillips' wife. I don't recollect that H. M. Phillips gave more than one notice. H. M. Phillips signed the sale as attorney for Joseph

M. Moss and David Samuel. I believe that Mr. Ingraham gave notice that this property had been assigned for the benefit of creditors before the date of the judgment on which the sale was made.

Eleventh.—Thomas Blackstone was sworn for plaintiffs, and deposed as follows:

Mrs. Yohe occupied the American House in Sixth street, in her lifetime; I think her occupancy commenced in October, 1839; she occupied the premises under William R. Hanson. There was a written lease; the lease was cancelled last spring by paying up some money; I have one I know myself; as far as I understood, Hanson claimed the property; I was served with a writ of ejectment which I notified Hanson of; I don't know under whom he claimed the property. I had thought, after receiving the writ of ejectment, that there was some doubt as to paying the rent. In conversation with Hanson, he said he had purchased the property under the best legal advice, and at auction, and he believed it was his; I knew who claimed the property—Moss, Phillips & Co. claimed the property; I knew nothing of the Virginia purchaser; I have the lease from Hanson; I can produce it; I suppose my papers are at the Schuylkill Bank.

Cross examined.—Mr. Hanson did not say from whom he purchased the property.

Twelfth.—Lease from R. & I. Phillips to Daniel Saint, dated 1st January, 1835; (prout same, hereto annexed, marked No. 12.)

Thirteenth.—Three several notices calling for books, &c.; (prout same hereto annexed, No. 13.)

Fourteenth.—Certain receipts for taxes; (prout same hereto annexed, marked No. 14,) at the request of plaintiffs, produced by def'ts in their receipt book. The first of these receipts is in the hand-writing of R. & I. Phillips; the others are in the hand-writing of the respective collectors.

And the counsel for the defendants, to maintain and prove the issue on their part, gave in evidence:

Fifteenth.—Deed from R. J. Herring and wife, to Robert Phillips; (prout same hereto annexed, marked No. 15.)

Sixteenth.—Exemplifications of proceedings in the Orphan's Court for the city and county of Philadelphia; (prout same hereto annexed, marked No. 16.)

Seventeenth.—Deed, Isaac Phillips, administrator of Robert Phillips, to Joseph M. Moss and David Samuel, dated 30th January, 1838, and deed indorsed thereon, from J. M. Moss and David Samuel to William R. Hanson, dated 10th May, 1839; (prout same, marked No. 17.)

Eighteenth.—Assignment, Isaac Phillips and Joseph L. Moss, trading as I. & R. Phillips, to Joseph M. Moss and David Samuel, dated 22nd June, 1837; (prout same, marked No. 18.)

Nineteenth.—Release, signed by various persons at different dates; (prout same, No. 19.) Objected as res inter alias acta; not for defects of proof of execution. Admitted as evidence of the fact of a release by the persons who have signed it; but not as evidence that they are creditors, or of the amount of debts alleged to be due.

Twentieth.—Deed: Joseph M. Moss and David Samuel to William R. Hanson, dated 10th May, 1839; prout same, hereto annexed, marked No. 20.

Twenty-first.—Exemplifications of the record of the Court of Common Pleas, of the discharge of Isaac Phillips; (prout same, hereto annexed, marked No. 21,—and *Bemond's* petition.)

Twenty-second.—Exemplifications of the record of the discharge of Joseph L. Moss, from the same court; (prout same, hereto annexed, marked No. 22, a.)

Certificate rule of July, 1838, and Sep., 1838, No. 22 *a*, read.

Twenty-third.—Edward D. Ingraham, a witness, produced on the part of the defendants, deposed as follows:

I attended the sheriff's sale as counsel for the assignees of R. & I. Phillips. As soon as Thomas (the auctioneer) began, I gave verbal notice that certain pieces of property, mentioned in the advertisement, did not belong to defendants, R. & I. Phillips, but had been assigned to my clients, by an instrument duly executed and recorded before the date of the plaintiffs' judgment. I then gave way to Henry M. Phillips. I gave notice that these lots had been sold.

Cross-Examined.

This was the sale that went into effect. I stated the date of the assignment, June, 1837. I think the words I made use of were, that the assignment was executed before the date of the judgment of the plaintiff. I designated the properties which are the subject of this suit.

Twenty-fourth.—Henry M. Phillips, a witness, produced by the defendants, deposed as follows:

I was at the sheriff's sale on the evening alluded to. (I am well convinced that Joseph L. Moss was not there.) Mr. David Samuel was there. I had been the attorney for the assignees since 1837. I appeared for John Moss alone. I requested Mr. Ingraham, the counsel for the assignees, to attend. I stated that Mr. Joseph L. Moss had never had any interest in the Arch street house, and that Isaac Phillips had never had more than a life estate in it; and that the interest of Isaac Phillips had, long antecedent to the date of the judgment under which the property was sold, been conveyed to Mr. John Moss, whom I represented. Mr.

Fallon is mistaken about the trusteeship. I never heard of such a trust, and there is no other trust. The property purchased by me, was purchased without consultation. My reason was, to avoid a lawsuit for Mr. Moss, and it was ratified. The Arch street property was purchased for John Moss. The Front street property for the assignees. Pennock purchased for me the Arch street property. I did not bid for all the property, certainly not for the three first properties; that is, the Arch street property.

Cross-Examined.

I think I bid for the other property. I cannot find the paper from which I read at the sale. John Moss is father-in-law to Isaac Phillips, and the father of Joseph L. Moss. R. & I. Phillips were brothers. Robert was an unmarried man, and, I believe, left no relative in this country but his brother. I had acted as counsel for the assignees before the sale.

And now plaintiff offers, in rebuttal,

Twenty-fifth.—Daniel Smith, Jr., sworn for plaintiffs, deposes as follows:

I am acquainted with the late firm of R. & I. Phillips. Isaac Phillips, I think, at the time of his failure, lived in his new house in Arch street. I was one of the appraisers of their estate. Michael Israel, deceased, was the other, I think, by the order of the Court of Common Pleas. I appraised the estate, as far as it was shewn to us. David Samuel and Joseph M. Moss showed the property to us. We had some conversation with the assignors. I cannot say whether they assisted in shewing all the property or not. I knew that on one occasion when we were together, they were present. I really forget whether it was when the appraisement was going on, or a short time previous. I can't say whether Isaac Phillips was present when the furniture was appraised. Samuel was present. I don't think either of the assignors spoke of the Sixth street property. The Arch street house is a fine, large, double house, built in handsome style, forty feet front on Arch, near Thirteenth street; new at that time. Never had been occupied, unless Phillips lived in it at that time. The lot is not very deep. I cannot say whether it has side yards. I do not know the value of it. It appears by this, (looking at the inventory and appraisement, hereto annexed, marked No. 25, afterwards produced in evidence,) that we did appraise the American house. I think the assignors did know that we appraised the Sixth street house. This is my schedule, or a copy of it. I recollect the house being described to me by the assignees. I knew the house well. I can't say that the assignors knew that the estate was appraised by us. We saw

them every day; talked of the appraisement; but it occupied but a short time. I think we spoke upon the subject, but can't say. I think it likely we did. Isaac Phillips kept horses and a carriage. He rode to his counting house in his carriage frequently.

Twenty-sixth.—George Link, a witness produced by plaintiffs, deposed as follows:

I am a master carpenter. I did the carpenter's work at the American House, in Sixth street. I was not contractor; there was no contract about. It was commenced in 1833, and finished in July, 1834. Isaac Phillips paid me for what I did by checks, and the last part was by two notes; the checks and notes were drawn in the names of R. & I. Phillips. I never heard Isaac Phillips speak of the ownership. Jos. L. Moss took no interest about the property, that I know of. I built the house in Arch street, by contract; the contract was made with Isaac Phillips. Isaac Phillips was to pay me (contract produced in evidence, dated 15th September, 1834; prout same hereto annexed, marked No. 28); the little addition at the bottom is in Isaac Phillip's hand-writing. The Arch street house was finished in July, 1835; the latter part of July he went to live there; he moved into it in the fall. It is the house on the three lots, Nos. 1, 2, 3, described in the venditioné.

Immediately after the contract was signed I commenced the building of the house; I built it without interruption. The contract was signed on the day it bears date. I was to get twenty thousand dollars; I did get it, and something for extra work. The amount I received did not include the mantles and the ceilings. The marble mantles, I suspect, were worth two hundred dollars each, in the first story; those in the second story, one hundred each. There were three or four marble mantles on the first floor; two parlours on each side of the hall, and a marble mantle in each. These are high prices for marble mantles. I can't tell much about the value of the Sixth street house. I should think it worth thirty thousand dollars; may not be worth $20,000. I began the American house in mid-summer, 1833. The Arch street house is 66 ft. in front.

Cross-Examined.

Isaac Phillips was in the city when we began the house. I am sure that Isaac Phillips is the man I talked to in 1833, when I began the Sixth street house. The carpenter's work cost three thousand seven hundred and fifty dollars. Robert Phillips had nothing to do with the Arch street house. I don't know that he had anything to do with the American house.

Twenty-ninth.—F. I. Troubat, Esq., a witness produced by plaintiffs, deposed as follows:

I am a member of the bar. I opposed, on their application for

the benefit of the insolvent laws, Joseph L. Moss and Isaac Phillips, for Bousquet and Henrion. They were separate claims. I withdrew the opposition in open court, on the day fixed for the hearing of the opposed cases; the day after the general day, they settled the claims of my clients. I can't say whether the petitioners settled with me or Mr. Henry M. Phillips. I saw old Mr. Moss there; the petitioners were also present. Old Mr. Moss was not in court; I saw him in the neighborhood. Henry M. Phillips represented the applicants. It strikes me that Henry M. Phillips, and Isaac Phillips, one of the applicants, took active part. I recollect that Isaac Philips appeared much frightened, and Moss quite calm. Phillips was agitated, and anxious to have the thing settled; perhaps not more anxious than I was. I dreaded the job of opposing. The settlement of my clients' claim was the consideration of withdrawing my opposition: so understood by Mr. Phillips, the applicant. I don't know that it was so understood by Moss, though he was about, and knew of the arrangement. I don't know how much I received, or how much my clients received. I think I received for Henrion seventy-five per cent., in cash; for Bousquet I received cash and notes; one thousand dollars in cash, and note drawn by old Mr. Moss. I don't know who was on the notes. Bousquet's was a large claim; five or six thousand dollars. The amount of Henrion's claim was a thousand or twelve hundred dollars. I don't recollect whether there was any other opposing creditor. I think there was one for a small amount. I think I withdrew my opposition about eleven o'clock, A. M.

Cross-Examined.

I think I received the money from Henry M. Phillips in both cases. In Bousquet's case I think I got it from Henry M. Phillips; in Henrion's case I received it from H. M. Phillips. Unless I am laboring under delusion, I think I received a great deal of money from Henry M. Phillips. Henry M. Phillips told me that the money came from old Mr. Moss. Being shown their receipt book, witness says, this is the receipt I gave at the time.

Thirtieth.—Sebastian Henrion, a witness for plaintiffs, deposed as follows:

Mr. Troubat represented my interest before the Insolvent Court. My claim was about nine hundred or a thousand dollars. Seventy-five per cent. of the amount was paid to me. I was paid in money. Mr. Troubat had charge of the business, and he pursued it. My instructions to Mr. Troubat were general.

Thirty-first.—Peter Bousquet, a witness for plaintiffs, deposed as follows:

By counsel for defendants on his voir dire. I have a claim still pending against R. & I. Phillips; an action of law. I have not

contributed to the expenses of carrying on this suit. I was not aware of it until yesterday. I never contributed in any way to disturb the assignment.

2nd in chief.

I instructed counsel to oppose Moss and Phillips. I did not attend court at the time of the opposition. My counsel received two thousand dollars; two hundred dollars in cash, and eighteen hundred dollars in notes, drawn by John Moss to my order at six months. The whole amount of my claim was six thousand dollars, which was two notes, drawn by R. & I. Phillips, in favor of I. S. Loyd.

Thirty-second.—Record of Judgment. Farmers' Bank Virginia, *vs.* R. & I. Phillips. Dist. Court for the City and County of Philadelphia, Dec., 1837, No. 574; (prout copy of same hereto annexed, marked No. 32.)

Thirty-third.—Record of Judgment. Victor Herman *vs.* R. & I. Phillips. Same court, I. T., 1837, No. 209; (prout copy same, marked No. 33.)

Thirty-fourth. — Record of Judgment. Walker *vs.* R. & I. Phillips. Same court, June term, 1837, No. 337; (prout copy of same hereto annexed, marked No. 34.)

Thirty-fifth.—Record of Judgment. Thomas *vs.* R. & I. Phillips. Same court, June term, 1837, No. 391; (prout copy of same hereto annexed, marked No. 35.)

Thirty-sixth.—Moses Thomas, a witness for plaintiffs, deposed as follows:

I am an auctioneer. In 1839 I sold the American House, and the lot in Chestnut street near Schuylkill Seventh. William R. Hanson was the purchaser. The lots were sold by public auction, at the Exchange, on the 30th April, 1839. David Samuel and Joseph M. Moss instructed me to sell them. They represented themselves as assignees of R. & I. Phillips. This is the sale book which I hold in my hands. Mr. Hanson signed the sale. There was a notice read by Mr. Fallon on that day, out loud, so that the bidders could hear. This is the full bill: (prout same hereto annexed, marked No. 37.)

Thirty-seventh. — Hanson purchased the Sixth street lot, at $20,300; the Chestnut street lot at $16,000.

Cross-Examined.

I do not know that Hanson was present when Mr. Fallon read the notice, but I presume that he was. I have no recollection of seeing Mr. Hanson in the room before the notice was read by Mr. Fallon. The notice was read after the reading of the description of the property. I might have seen Mr. Hanson, but have no recollection. Mr. Hanson's practice is to commence bidding to-

wards the close of a sale; not to commence bidding until the property has been up some time.

Thirty-eighth.—Notice read by Mr. Fallon from the rostrum at sale. Read in evidence; (prout same hereto annexed, marked No. 39.) Mr. Fallon states I furnished a copy of said notice to Mr. Phillips the same evening, or next day.

B.—The plaintiffs call for the books of R. & I. Phillips. Notice to produce books, &c., &c., read, and no books produced, and no reply made.

Thirty-ninth.—William C. Bridges, a witness for plaintiffs, deposed as follows:

I was book-keeper for the firm of R. & I. Phillips. And the plaintiff proposed to give evidence of the contents of the books of the former firm of R. & I. Phillips, which was objected to in behalf of William R. Hanson, but the objection was overruled, and that evidence admitted; the court declaring that the object was to show a joint interest of the firm, returned as such, and advertised as part of the stock by the assignees; and that the plaintiffs, as purchasers at sheriff's sale, are not bound to give as precise evidence as a private purchaser.

As far as my memory serves me, Robt. G. Herring owed to the firm of R. & I. Phillips three thousand dollars: the old firm. Herring bought the property in Sixth street, and had paid about three thousand dollars upon it; and he transferred the property to R. & I. Phillips, in payment of his debts. I presume the property was charged, and Herring credited, but I have no distinct recollection.

The books were kept by single and double entry; I have no recollection of how the property was charged in the books, nor how the account was kept; I don't know where the rest of the money came from to pay the balance; I left the counting house of R. & I. Phillips, about the middle of the year 1832; there was an account opened in their books for each partner separately; I can't recollect that the firm assumed the payment of any liens on the house; I should presume that the books would set forth the true state of the facts, as regards this purchase; I opened a new set of books a short time before I left R. & I. Phillips, by double entry; I recollect no conversation with any of the members of the firm on the subject; I have no recollection of the entry; I believe there is an entry in the books of this transaction of the transfer.

The form of entry I have no recollection of. I can't tell whether Robert Phillips was or was not solvent, at the time of his death; when I left the old firm I thought they were solvent; they were joint partners, half and half. The capital was in the firm when I went there.

Cross-Examined.

I don't know whether there was a deed from Herring, or how the

transfer was made; I knew he liquidated the debt, but how the transfer was made, I have no recollection; I know that the firm of R. & I. Phillips, about the time of my leaving them, met with heavy losses; the loss on wool was not settled before I left them; it terminated against them, and was more than one hundred thousand dollars. The tobacco loss—a shipment of tobacco to France—they must have lost a great deal of money upon; I have no idea how heavy the loss was. There was an intimacy between Robert Phillips and Mr. Herring; there was animosity existing between Isaac Phillips and Mr. Herring; I don't think that Isaac Phillips was in the country when Robert Phillips died; during the latter part of Robert Phillips' life he was very intemperate, a year or two; he got worse after the seizure of the wool in New York. Robert Phillips was a very liberal man; he was speculating in stocks and funds; most of his operations were for the Rothschilds. I don't know that he ever gambled.

Fortieth.—N. Monachesi, a witness for plaintiffs, deposed as follows:

I am a portrait painter—I also paint fine paintings in fresco, on walls or ceilings. I painted the Exchange; that is fresco painting. I painted the ceiling of the parlors in Phillips' house, in Arch street; four ceilings and the vestibule; I don't recollect when I finished painting them; I think in the year 1835; I received sixteen hundred dollars for the whole; Mr. Phillips paid me; the last payment was in a check of one thousand dollars, drawn by Isaac Phillips; I don't know in whose name was the check; I received two or three hundred dollars from Mrs. Phillips; (plf'ts) called for the books of R. & I. Phillips—answer was, the books are not here; Mr. Joseph L. Moss is sick in his bed.

Forty-first.—James Fausitt, a witness for plaintiffs, deposed as follows:

I am not interested in this suit; I am a creditor of Phillips and Moss; this suit was not brought at my instance; I have contributed nothing towards the expenses of this suit.

(In chief.)—I am a creditor of R. & I. Phillips, in the sum of nineteen thousand dollars and upwards; I purchased of R. & I. Phillips, Joseph's bills endorsed by R. & I. Phillips, for three thousand pounds sterling; gave fourteen thousand five hundred *and* thirty-three dollars and thirty-four cents—9 p. c. exchange; the bills were returned protested in August; I instructed my son to oppose R. & I. Phillips at first. I reside in Arch street. Mr. Phillips resides in Arch street. I believe Mr. Phillips kept a carriage; I dont know that he rode; I believe they were sold at Wolbert's auction store. Moss and Phillips kept carriages; there were several belonging to them sold at Wolbert's.

Cross-Examined.

I don't know whether the horses and carriages were sold before, or after the assignment of R. & I. Phillips. The nineteen thousand two hundred and fifteen dollars, due from R. & I. Philips to me, includes damages. The bill was dated Feb. 27, 1837. We have obtained judgment for our debt; we paid for the bill $14,000 in cash.

Forty-second.—J. B. Sewell, a witness for plaintiffs, deposed as follows:

I was Deputy Register of Wills in 1837; Isaac Phillips took out letters of administration to the estate of his brother Robert Phillips, on the 4th of Feb'y, 1837; he came to the register's office with two sureties. Mr. Phillips stated that he was the nearest relative.—This is an exemplified copy of the bond; (prout same, hereto annexed, marked No. 43, and read.)

Forty-third.—He gave security. He stated the value of Rob't Phillips' estate; said it would not exceed twenty thousand dollars, to the best of his knowledge and belief; he swore that it did not exceed twenty thousand dollars. A caveat was entered against taking letters of administration to the estate of Rob't Phillips, by Mr. Moss, on the eighteenth day of December, 1833, by John Moss; notice was afterwards given to Mr. John Moss. This notice is part of the record.

Forty-fourth.—The caveat was then read, hereto annexed, marked No. 44.

Forty-fitfh.—The citation was then read, hereto annexed, marked No. 45.

Forty-sixth.—Samuel Keemler, Esq., a witness for plaintiffs, deposed as follows:

I am a member of the bar. I had a claim put into my hands from Locwig—about five hundred dollars. I entered my opposition to Isaac Phillips and Joseph L. Moss. I marked it in the copy book for him. There was an arrangement made; there had been some negotiation before this; my impression is, that it was not accepabtle to him, and he instructed me to make the opposition. Previous to this there was some negotiation between Mr. H. M. Phillips and myself, on the day previous to the hearing or discharge. I think some offer was made for the settlement of the claim of Locwig; and he was satisfied to take it for his claim. I obtained a check from Henry M. Phillips—I think, his check for the amount; after that I went into court and withdrew my opposition. I think I received 75 per. cent of my claim. It was in consequence of the payment, that I withdrew my opposition. I had nof urther claim, and consequently withdrew all opposition.

Forty-seventh.—John Slack, a witness for plaintiffs, deposed as follows:

My counting house is at No. 58, South Front street, within three

doors of R. & I. Phillips' old counting house. It was not uncommon for Mr. Phillips to come down in his carriage. Mr. Joseph L. Moss came in his carriage sometimes. I don't know that they had a clerk named Eyre, or one named Welsh. I don't know where Joseph L. Moss resided.

Forty-eighth.—Deed, 31 December, 1834—Ann W. Morris, to Joseph L. Moss—was then read; (prout same, hereto annexed, marked No. 48.)

Forty-ninth.—Record of deed: Joseph L. Moss and wife, to David Samuel: (prout same, hereto annexed, marked No. 49.)

Fiftieth.—Deed: David Samuel to Joseph L. Moss; (prout same, hereto annexed, marked No. 50.)

Fifty-first.—Thomas D. Smith, a witness for plaintiffs, deposed as follows:

I am employed in the office of Prothonotary of the Court of Common Pleas for the city and County of Philadelphia. This is the assignees' docket "entry," *June 26th*, 1837. Inventory and valuation filed by J. M. Moss and David Samuel, assignees. I looked for the inventory and valuation of R. and I. Phillips in the office, and was unable to find it. I have looked for it more than once, and have not found it. I looked for it in the place where it ought to be; a careful search was made by me. The inventory and appraisement were filed 10th July, 1837. The papers in our office are kept in cases in the office; but every member of the bar has access to them; they are constantly referred to. We keep no book into which we copy inventories and valuations.

Inventory and appraisement, read in evidence, hereto annexed, marked No. 25.

Fifty-second.—Joseph S. Tennery, Esq., a witness for plaintiffs, deposed as follows:

I am a clerk in the office of the Prothonotary of the Court of Common Pleas for the city and County of Philadelphia. This is the assignee's docket. This is my hand-writing, (entry of the 26th June, 1837.) I believe the paper purporting to have been filed, was filed on the date of this entry.

Cross-Examined.

The appraisers got no copy of the inventory from the office. It is very seldom that an inventory is filed before the appraisement is made; sometimes a copy of the inventory is taken out—sometimes not.

Fifty-third. Certificate of Prothonotary of the District Court, Philadelphia, in case of Bank of Virginia *vs.* I. and R. Phillips; read, hereto annexed, marked No. 53.

Fifty-fourth.—Letter of R. and I. Phillips to Eustace, February 13th, 1837; read, hereto annexed, marked No. 54.

And the plaintiff proved service, by John Fallon, upon the counsel of the respective defendants, of a notice dated 22d October, 1840, and offered to give the said notice in evidence to the jury; which was objected to, so far as it affected Wm. R. Hanson; and the objection overruled, and the testimony admitted and excepted to.

Fifty-fifth.—John R. Welsh, a witness for plaintiffs, deposed as follows:

I received a letter from Mr. Fallon. I reside, at present, at Baltimore. I wrote this letter at my father-in-law's. Henry M. Phillips is not my father-in-law. I was the clerk of R. and I. Phillips; on the 1st June, 1833, I became their clerk; ceased to be their clerk in 1837. After the assignment, I was the out-door clerk; transacted the out-door business. I know that there was an account kept in the books of R. & I. Phillips for the American House in Sixth street. I do not recollect what the account stands charged with. I did not keep the books. The account was opened in 1833.

Question.—To what account, if any, was the purchase money of that property carried?

Answer.—To that account, as far as my knowledge extends.

They were building the American House when I went into their counting-house. The money for building that house was carried into that account. There were private accounts in their books, for both Robert and Isaac Phillips. I don't know how the private account of Robert Phillips stood in the books. After the death of Robert Phillips, it was found that the firm were not solvent.

I think Joseph L. Moss, when he came into the firm, brought no cash or capital, except some balances due to him from R. and I. Phillips. I have been in the house in which Joseph L. Moss resides in Walnut street. I was not there prior to 1837; oh yes, I have been there previous to that time. The house is at the corner of Juniper street. I think I have been there once or twice since the assignment in 1837. I did not notice any change of furniture. I think John Moss has an account opened in the books of R. and I. Phillips; but I can't recollect particularly. I had some business in this city. I saw Henry M. Phillips.

And now defendants, in surrebuttal, proceed.

Fifty-seventh.—Mr. Wolbert, re-examined for defendants, deposed as follows:

I sold the horses and carriages of both Isaac Phillips and Joseph L. Moss, on the 8th of April, 1837.

Fifty-eighth.—Certificate of naturalization of Isaac Phillips, read, (hereto annexed, marked No. 58.)

Fifty-ninth.—Henry L. Phillips, re-examined by defendants, deposed as follows:

There is a brother of Isaac Phillips living, Samuel Phillips; and

two of the children of another brother, Lawrence Phillips; I have a law-suit pending for him.

Sixtieth.—Thomas Dunlap, Esq., a witness for the defendant, deposed as follows:

I was the counsel for I. and R. Phillips, in 1834, until the assignment: I drew their assignment; it is in my hand-writing, the whole of it, except the signatures; there was something said before the assignment about the Walnut street property. Schedules of the property of R. and I. Phillips were exhibited to me, in which was the Walnut street property, in which Jos. L. Moss then resided, and does so still. On examining into the property to be assigned, and conferring with those gentlemen, I ascertained, that there was a mortgage and judgment on that property, and considered the incumbrance so heavy, that the item of property was destroyed, and I so informed those gentlemen. My impression is, that it was omitted by my advice. I told them, that the incumbrances were so great, that I considered it as nothing. Between three and four years ago, in consultation between myself and Mr. Chauncey on the subject, I informed the assignees, that there was no use in putting it, (the Walnut street property,) into the assignment; I think Mr. Chauncey concurred; the assignment was executed in my house, by the wives of the assignees; the assignment was under consideration for a week, or more; the property in Walnut street was represented to me as the property of Joseph L. Moss.

Cross-examined.—I was informed of the incumbrances; they destroyed this item of property; they had nothing to assign.

Sixty-first.—Exemplification of record from the district court for the City and County of Philadelphia, John Moss vs. Joseph L. Moss, March term, 1837, D. S. B. 51; (prout same, hereto annexed, marked No. 61.)

Sixty-second.—Deed, Asaph Stone and wife to Sarah Moss, November 13th, 1821; (prout same, hereto annexed, marked No. 62.)

Sixty-third.—Deed, Isaac Phillips and wife to Peter McCall, 1st October, 1835; (prout same, hereto marked No. 63.)

Sixty-fourth, sixty-fifth, sixty-sixth.—3 deeds, 29th August, 1834, Benjamin Yarnall and wife to Sarah Moss Phillips; (prout same, hereto annexed, marked No. 64, 65, 66.)

Sixty-seventh.—Deed, Isaac Phillips to John Moss; (prout same, hereto annexed, marked No. 67.)

Sixty-eighth.—Certificate of Mr. Gratz; (prout same, hereto annexed, marked No. 68.)

Sixty-ninth.—Bill in equity, Eustace against Isaac Phillips and Joseph L. Moss; (prout same, hereto annexed, marked No. 69.)

After the testimony was closed, the court called on the plaintiff's counsel to proceed to address the jury, at which time a large number of books were brought into court, said to be the books of R. and I. Phillips, and the inspection of them was offered to the plaintiff's

counsel; but the court said it was too late, and they would not permit time to be taken up in that stage of the case.

No. 1.

This indenture, made the ninth day of June, in the year of our Lord one thousand eight hundred and thirty-five, between George H. Thompson, of the city of Philadelphia, gentleman, and Rebecca H., his wife, of the one part, and Isaac Philips, of the said city of Philadelphia, merchant, of the other part, witnesseth: that the said George H. Thompson and Rebecca H., his wife, for and in consideration of the sum of six thousand nine hundred and sixty-six dollars and two-thirds of a dollar, lawful silver money of the United States of America, unto them well and truly paid by the said Isaac Phillips, at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released and confirmed, and by these presents, do grant, bargain, sell, release and confirm unto the said Isaac Phillips, his heirs and assigns, all that certain lot or piece of ground, situate on the north side of Chesnut, at the distance of forty-two feet westward, from the west side of Schuylkill Seventh street, in the city of Philadelphia, containing in front or breadth on the said Chesnut street, sixty-six feet, and extending in length or depth, northward, one hundred and fifty-eight feet, to a certain twenty feet wide street, called Linden street; bounded on the east and west by ground now or late of William B. Fling; on the north by the said Linden street, on the south by the said Chesnut street (being the same premises which William B. Fling and Susanna, his wife, by indentute, dated the thirtieth day of January, anno Domini eighteen hundred and thirty-five, recorded at Philadelphia, in deed book, A. M., No. 56, page 384, &c., granted and conveyed unto the said George H. Thompson, in fee, subject to the payment of a yearly ground rent or sum of two hundred and seventy-two dollars, lawful silver money aforesaid, in half yearly payments, on the first day of the months of February and August, in every year, for ever, without any deduction for taxes, &c., unto Simon Gratz, his heirs and assigns; and subject also to the payment of a certain mortgage debt, or principal sum of three thousand five hundred dollars, lawful money aforesaid, with interest for the same, unto Thomas W. Morris, Esquire, as therein expressed; together with the free and common use and privilege of the said Linden street, at all times forever; and together also, with all and singular, the streets, ways, alleys and passages, waters, water courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging, or in any wise appertaining; and the reversions and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of them, or either of them, the said George H. Thompson, and Rebecca H., his wife, at law, in equity, or otherwise howsoever, of, in, and to, the

same: To have and to hold the said described lot or piece of ground, hereditaments and premises, hereby granted or mentioned, and intended so to be, with the appurtenances, unto the said Isaac Phillips, his heirs and assigns, to and for the only proper use and behoof of the said Isaac Phillips, his heirs and assigns, forever; under and subject, nevertheless, to the payment of the aforesaid yearly ground rent or sum of two hundred and seventy-two dollars, lawful silver money aforesaid, so as the same shall hereafter accrue, and grow due, and payable unto the said Simon Gratz, his heirs and assigns, forever. And also subject to the payment of the above mentioned mortgage debt, or principal sum of three thousand five hundred dollars, with interest, as the same shall grow due, and payable unto the said Thomas W. Morris, Esquire. And the said George H. Thompson, for himself, his heirs, executors and administrators, doth by these presents covenant and agree, to and with the said Isaac Phillips, his heirs and assigns, that he, the said George H.Thompson, and his heirs, all and singular, the hereditaments and premises hereby granted or mentioned, and intended so to be, with the appurtenances, (subject as aforesaid) unto the said Isaac Phillips, his heirs and assigns, against him, the said George H. Thompson, and his heirs, and against all and every other person and persons whomsoever, lawfully claiming, or to claim the same by, from or under him, them, or any of them, shall and will warrant and forever defend.

In witness whereof, the said parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.

GEO. H. THOMSON. [L. S.]
R. H. THOMSON. [L. S.]

Sealed and delivered in presence of us,
WILLIAM MILNOR,
D. F. WILLING.

Received the day of the date of the above written indenture, of the above named Isaac Phillips, the sum of six thousand nine hundred and sixty-six dollars and two-thirds of a dollar, such, as aforesaid, being the full consideration money above mentioned.

GEO. H. THOMSON.

Witnesses at signing,
SIMON GRATZ,
S. W. THACKARD.

The ninth day of June, anno Domini, 1835, before me, the subscriber, one of the Aldermen of the City of Philadelphia, personally appeared the above named George H. Thompson, and Rebecca, his wife, and acknowledged the above written indenture to be their act and deed, and desired the same as such might be recorded ac-

cording to law; the said Rebecca H., being of full age, by me separate and apart from her said husband examined, and the contents of the said indenture being made known unto her, did declare that she did voluntarily, and of her own free will and accord, seal, and, as her act and deed, deliver the said indenture, without any compulsion or coercion of her said husband.

Witness my hand and seal, the day and year aforesaid.

WILLIAM MILNOR, *Ald.* [L. S.]

Endorsed on the above indenture:

Recorded in the office for recording deeds, &c., for the City and County of Philadelphia, in deed book, A. M. No. 63, page 425.

Witness my hand and seal of office, the 20th day of

[L. S.] June, A. D., 1835.

A. McCARAHU, *Rec.*

No. 2.

This indenture, made the twenty-second day of June, in the year of our Lord, one thousand eight hundred and thirty-five, between James C. Fisher, of the city of Philadelphia, gentleman, and Ann, his wife, of the one part, and Isaac Phillips, of the same city, merchant, of the other part; whereas, Simon Gratz, of the said city, merchant, by indenture dated the twenty-fifth day of July, anno Domini, eighteen hundred and thirty-three, recorded at Philadelphia, in deed book A. M., No. 38, page 332, &c., granted and conveyed unto William B. Fling, his heirs and assigns, all that certain lot or piece of ground, situate on the north side of Chesnut street, at the distance of forty-two feet westward from the west side of Schuylkill Seventh street, in the city of Philadelphia, containing, in front or breadth, on the said Chesnut street, sixty-six feet, and extending, in length or depth, northward, one hundred and fifty-eight feet, to a certain twenty feet wide street, called Linden street; bounded on the east and west by ground granted or intended to have been granted to the said William B. Fling, on ground-rent; on the north by the said Linden street, and on the south by the said Chesnut street, with the appurtenances, reserving thereout unto him, the said Simon Gratz, his heirs and assigns, the yearly rent or sum of two hundred and seventy-two dollars, lawful silver money of the United States of America, in half yearly payments, on the first days of Feb'ry and August, in each and every year, forever, without any deduction for taxes, as therein expressed; and the said Simon Gratz, by indenture endorsed on the counterpart of the said recited indenture, dated the twenty-sixth day of July, anno Domini, eighteen hundred and thirty-three, recorded in deed book, A. M., No. 38, page 335, &c., granted and assigned the above mentioned yearly rent charge of two hundred and seventy-two dollars, with the appurtenances, unto the said James C. Fisher, his heirs and as-

signs; and whereas, the above named William B. Fling, with Susanna, his wife, by indenture, dated the thirtieth day of January last past, recorded in deed book, A. M., No. 56, page 384, &c., granted and conveyed the above described lot or piece of ground, with the appurtenances unto George H. Thompson, his heirs and assigns, subject to the payment of the aforesaid yearly rent charges, and the said Geo. H. Thompson with Rebecca H., his wife, by indenture, dated the ninth day of June, instant, duly executed and acknowledged, and now lodged in the proper office for record, granted and conveyed the same lot or piece of ground, with the appurtenances, into the said Isaac Phillips, his heirs and assigns, subject to the aforesaid yearly rent charges, as in and by the said several indentures above recited, reference being had unto them respectively, will more fully and at large appear.

Now, this indenture witnesseth: that the said James C. Fisher and Ann, his wife, for and in consideration of the sum of four thousand five hundred and thirty-three dollars and thirty-three cents, lawful money of the United States of America, unto them well and truly paid, by the said Isaac Phillips, at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, have granted, bargained, sold and assigned, remised, released and extinguished, and by these presents do grant, bargain, sell and assign, remise, release and extinguish, unto the said Isaac Phillips, his heirs and assigns, all that, the aforesaid yearly rent charge, or sum of two hundred and seventy-two dollars, lawful silver money aforesaid, issuing out of, and chargeable upon all that, the above described lot or piece of ground, situate on the north side of Chesnut street, at the distance of forty-two feet westward, from the west side of Schuylkill Seventh street, aforesaid; containing in front or breadth, on the said Chesnut street, sixty-six feet, and extending in length or depth northward one hundred and fifty-eight feet to Linden street; bounded as herein above mentioned and declared; together with all rights, remedies and incidents, thereunto belonging or appertaining, and all arrearages thereof, and all covenants for payment thereof, and the reversions and remainders thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of them, or either of them, the said James C. Fisher and Ann, his wife, of, in, and to the same, as well as of, in, and to the said described lot or piece of ground, whereon the said yearly rent charge is such; to have, hold, take, receive and enjoy the said yearly rent charge, or sum of two hundred and seventy-two dollars, such as above said hereditaments and premises, hereby granted and released, or mentioned and intended so to be; with all rights, incidents and appurtenances, unto the said Isaac Phillips, his heirs and assigns, to the only proper use and behoof of the said Isaac Phillips, his heirs and assigns, forever.

And the said James C. Fisher, and his heirs, all the aforesaid yearly rent charge, and premises hereby granted and released, or

mentioned, and intended so to be, with the appurtenances, unto the said Isaac Phillips, his heirs and assigns, against him, the said James C. Fisher, and his heirs, and against all and every other person and persons whomsoever, lawfully claiming or to claim, by, from, or under him, them or any of them, shall, and will warrant and forever defend by these presents.

In witness whereof, the said parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.

JAMES C. FISHER, [L. S.]
ANN FISHER. [L. S.]

Sealed and delivered in the presence of us,
S. W. THACKARA,
JOSEPH BURDEN.

Received, the day of the date of the above written indenture, of the above named Isaac Phillips, the sum of four thousand five hundred and thirty-three dollars and thirty-three cents, such as above said, being the full consideration money above specified.

JAMES C. FISHER.

Witnesses at signing,
S. W. THACKARA,
JOSEPH BURDEN.

The twenty-second day of June, anno Domini 1835, before me, the subscriber, one of the aldermen of the city of Philadelphia, personally appeared the above named James C. Fisher and Ann, his wife, and acknowledged the above written indenture to be their act and deed, and desired the same as such might be recorded according to law; the said Ann, being of full age, by me separate and apart from her said husband examined, and the contents of the said indenture being made known unto her, did declare, that she did voluntarily, and of her own free will and accord, seal, and as her act and deed, deliver the said indenture, without any compulsion or coercion of her said husband.

Witness my hand and seal, the day and year aforesaid.

J. BURDEN, *Ald.* [L. S.]

(Endorsed on the above deed.)

Recorded in the office for recording deeds, &c., for the city and County of Philadelphia, in deed book A. M., No. 65, page 538, &c.

[L. S.] Witness my hand and seal of office, June 22d, 1835.

A. McCARACHU, *Rec.*

In the District Court for the city and County of Philadelphia.

THE FARMERS' BANK OF VIRGINIA,
vs.
ISAAC PHILLIPS & JOSEPH L. MOSS, trading under the firm of R. & I. Phillips. } No. 4.

Am. action case, to Dec. term, 1837.

It is agreed that the above action be entered, and that judgment be entered in favor of the plaintiff, on the twenty-second day of January, A. D. 1838, for the sum of nine thousand five hnndred and forty-one dollars and fifty-eight cents, subject to the defendants' discharge under the insolvent laws of the Commonwealth of Pennsylvania.

CHAUNCEY & CHESTER,
for Plaintiffs.
HENRY M. PHILLIPS,
for Defendants.

The above suit is brought on a bill of exchange, of which the following is a copy.

$9,085 92.

Richmond, March 4th, 1837.

Fifteen days after date, pay to the order of H'y Thasall, nine thousand eighty-five 92-100 dollars, value received, which place to account of

Your ob't serv't,
(Signed,) JOHN H. EUSTACE.

To MESSRS. R. & I. PHILLIPS, Philad'a.

(Indorsed,) H. THROWATT, by
Att'y: J. M. EUSTACE.
(Signed,) R. & I. PHILLIPS.

Statements.

Bill of ex., due 22 March, 1837 - - -	$9,085 92
10 mo's In't. - - - - - - - -	454 28½
Protest - - - - - - - - -	1 37½
	$9,541 58

CITY AND COUNTY OF PHILADELPHIA, *ss:* [L. S.]

Pleas at Philadelphia, before the Honourable Thomas M. Pettit, president, and George M. Stroud and Joel Jones, Esquires, judges of the district court for the city and County of Philadelphia, of the term of December, A. D. one thousand eight hundred and thirty-seven.

It is thus contained:

THE FARMERS' BANK OF VIRGINIA,
vs.
ISAAC PHILLIPS & JOSEPH L. MOSS, trading under the firm of R. & I. Phillips. } No. 873.

Amicable action case, December term, A. D. 1837—No. 873.

And now, January 22d, 1838, amicable action filed, and judgment confessed, in favor of plaintiff, for nine thousand five hundred and forty-one dollars and fifty-eight cents, subject to defendants' discharge under the insolvent laws.

And now, September 12th, A. D. 1838, a precept of the Commonwealth of Pennsylvania, commonly called a fi. fa., is issued out of our district court, in the words following, to wit:

CITY AND COUNTY OF PHILADELPHIA, *ss:*

The Commonwealth of Pennsylvania, to the sheriff of Philadelphia County, greeting:

We command you, that of the goods and chattles, lands and tenements of Isaac Phillips and Joseph L. Moss, copartners, trading as R. & I. Phillips, in your bailiwick, you cause to be levied, nine thousand five hundred and forty-eight dollars and fifty-eight cents, which to the Farmers' Bank of Virginia, to the use of John H. Eustace, lately in our district court for the city and County of Philadelphia, were adjudged for their damages, which they sustained as well by occasion of the non-performance of a certain promise and assumption, by the said defendants, to the said plaintiffs at Philadelphia, in your county made, as for their costs and charges by them about their suit in that behalf expended, whereof the said defendants are convict, as appears of record, &c.; and have you that money before our judges at Philadelphia at our said court, there to be held the first Monday of October next, to render to the said plaintiffs for the damages aforesaid; and have you then there this writ.

Witness, the Honourable Thomas M. Pettit, president of our said court at Philadelphia, the 12th day of September, in the year of our Lord one thousand eight hundred and thirty-eight.

Pro F. COMLY, *Prothonotary*,
M. COATS.

And now the sheriff makes return to the said writ, in the words following, to wit:

The execution of this *writ* appears by reference to a certain schedule and inquisition hereto annexed.

So answers

J'N G. WATMOUGH,
Sheriff.

The inquisition and schedule referred to in sheriff's return to writ, appears in the words following, to wit:

Inquisition, indented and taken at Philadelphia, the twenty-eighth day of September, in the year of our Lord one thousand eight hundred and thirty-eight, before John G. Watmough, Esq., high sheriff of the city and county of Philadelphia, by virtue of a writ of the Commonwealth of Pennsylvania, to me directed, and to this inquisition annexed by oaths and affirmations of the jurors, whose names and seals are hereto annexed, good and lawful men of the county aforesaid, who, upon their oaths and affirmations aforesaid, respectfully do say: that the rents, issues and profits of the within described property, by me, the said sheriff, taken in execution by virtue of the said writ, wherein the Farmers' Bank of Virginia, to the use of John H. Eustace, is plaintiff, and Isaac Phillips, and Joseph L. Moss, *defendant*, are not of a clear value beyond all reprizes, sufficient within the space of seven years to satisfy the debt and damages in the writ aforesaid mentioned.

In testimony whereof, as well I, the said sheriff, as the inquest aforesaid, to this inquisition, have interchangeably set our hands and seals, the day and year first above written.

JNO. G. WATMOUGH, [L. S.]

JACOB BRETY, [L. S.]
JESSE WILLIAMSON, [L. S.]
AD. TRAQUAIR, [L. S.]
W. WEST, [L. S.]
FARMAR BURN, [L. S.]
C. STEVENSON, [L. S.]
C. F. HOECKLEY, [L. S.]
GEORGE BASTIAN, [L. S.]
R. E. GRAY, [L. S.]
ISAAC MYER, [L. S.]
WILLIAM LEHMAN, [L. S.]
WM. VOGDES. [L. S.]

Schedule of property levied upon by the sheriff, as mentioned in his return to writ, above stated, to wit:

All that certain three story brick messuage or tenement, and lot or piece of ground thereunto belonging, situate on the south side of Walnut street, in the city of Philadelphia, containing in front or breadth on Walnut street twenty-one feet, and in length or depth southward one hundred and seventy feet, to a thirty feet wide alley, lately laid out and opened, leading from the said Juniper street to Thirteenth street, bounded north by said Walnut street, east by a messuage or lot of ground granted by Peter Fritz, et ux., to Rowland Stevenson; south by abovementioned thirty feet wide alley, and west partly by a messuage or lot of ground lately granted by Joseph L. Moss, et ux., to Sarah *Macossin*, and partly by the lot of ground next hereinafter described.

Also all that certain piece of ground, situate on the north side of the aforementioned thirty feet wide street and east side of Juniper street, in the city of Philadelphia; containing in breadth, east and west, fifty-nine feet three inches; bounded on the north by the abovementioned lot of ground, lately granted by Joseph K. Moss, et ux., to Sarah Maccoun; east by the lot of ground first herein described; south by the aforesaid thirty feet wide alley, and west by Juniper street aforesaid; subject, with respect to the lot of ground last described, to a certain covenant restraining the erection of buildings thereon, contained in a certain indenture, from the said Joseph K. Moss, et ux., to the said Sarah Maccoun, dated 21st November, one thousand eight hundred and thirty-six, recorded in deed book S. H. F., No. 10, page 297; together with the common use and privilege of the said thirty feet wide alley, with or without horses, cattle, and carriages, at all times hereafter forever; together with all and singular the buildings, improvements, ways streets, alleys, passages, waters, water-courses, rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereunto belonging, or in anywise appertaining.

Also all that certain four story brick messuage or tenement, and all those three lots or pieces of ground hereinafter described, to wit:

All that certain lot or piece of ground situate on the south side of Arch or Mulberry street, at the distance of one hundred and twenty feet west, from the west side of thirteenth street in the city of Philadelphia, containing in front, on the said Arch street, twenty-two feet, and in length or depth, extending southward one hundred and thirty-seven feet, to a twenty feet wide street called Paper alley, bounded east by a lot of ground by William Sansom, et ux., to Wm. Johnson, on ground rent; south by said Paper alley, west by the next described lot of ground, north by Mulberry street aforesaid.

Also all that certain lot or piece of ground situate on the south side of said Mulberry street, at the distance of one hundred and

forty-two feet west, from the west side of Thirteenth street: containing in front or breadth on Mulberry street thirty-two feet, and in length or depth extending south one hundred and thirty-seven feet to said Paper alley; bounded on the east by the above described lot of ground, south by said Paper alley, west by the next hereinafter described lot of ground, and north by Mulberry street aforesaid.

Also all that certain lot or piece of ground, situate on the south side of Mulberry street, at the distance of one hundred and sixty-four feet west, from the west side of Thirteenth street; containing in front or breadth on said Mulberry street twenty-two feet, and in length or depth southward to Paper alley, one hundred and thirty-seven feet; bounded east by the last above described lot of ground, south by the said Paper alley, west by a lot of ground granted by the said William Sansom, et ux., to Joseph Donaldson, on ground rent, and north by Mulberry street aforesaid; together with all and singular the improvements, buildings, ways, streets, alleys, waters, water-courses, passages, rights, liberties, privileges, hereditaments and appurtenances whatsoever unto the said premises belonging or in anywise appertaining. Each of the three last described lots of ground, subject to a yearly ground rent or sum of $231 each, payable half yearly, on the twenty-third day of October and April, unto William Sansom, his heirs and assigns, without any defalcation for taxes.

Also all that certain lot or piece of ground situated on the north side of Chestnut street, at the distance of forty-two feet west, from the west side of Schuylkill Seventh street, in the city of Philadelphia; containing in front or breadth on Chestnut street sixty-six feet, and extending in length northward one hundred and fifty-eight feet to a certain twenty feet wide street, called Linden street, being the same premises which George H. Thompson, and Rebecca, his wife, granted unto the said Isaac Phillips, in fee, by indenture, dated 9th June, A. D. 1835, and duly recorded; bounded east and west by ground granted to William B. Fling, on ground rent; north by said Linden street, and south by Chestnut street; together with all rights, remedies, and incidents thereunto belonging, or in anywise appertaining; recorded in deed book A. M. No. 65, page 538.

Also all that certain lot or piece of ground situated on the westerly side of South 6th street and between High and Chestnut streets, in the city of Philadelphia; containing in breadth, on said Sixth street, twenty-five feet, more or less, and of that breadth extending in length or depth westward to Decatur street, one hundred and seventy-five feet, more or less, with the appurtenances. On the premises is erected a four story substantial brick messuage, extending the entire depth of the lot from Sixth to Decatur street, narrowing in the centre, so as to leave a small side yard.

Also all that certain messuage or tenement, and four storied warehouse and lot or piece of ground thereunto belonging, situate

on the east side of Delaware Front street, between Walnut and Spruce street, in the city of Philadelphia; containing in front or breadth on the said Front street, nineteen feet, more or less, and extending in length or depth, from the said Front street to Water street, forty-one feet seven inches; bounded on the north by a messuage and lot of ground of John McCauly; east by water street, south by the middle line of the partition between this messuage and the next adjoining messuage to the south, conveyed by Benjamin B. Howell, et ux., to Dr. James Dunlap, and west by Front street aforesaid; being the same premises which Wm. M. Biddle, surviving assignee of the estate of Henry Sergeant, by indenture, dated 24th November, A. D. 1824, granted to John Sergeant, Esq., in fee, together with the free use and privilege of the five feet alley, extending from the said Front street to Water street adjoining, and to the southward of the messuage and lot conveyed by the said Benjamin B. Howell, et ux., to the said James Dunlap, together with all and singular, the buildings, improvements, ways waters, water-courses, rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereunto belonging, or in anywise appertaining; recorded in deed book G. W. R., No. 10, page 123. Which remains in my hands unsold, for want of buyers; and the residue of the execution of the writ appears by reference to a certain schedule and inquisition hereto annexed. So answers

JNO. G. WATMOUGH, *Sheriff.*

And now, December, 1838, a precept of the Commonwealth of Pennsylvania is issued out of our district court, for the city and county of Philadelphia, commonly called a venditioni exponas, in the words following, to wit:

CITY AND COUNTY OF PHILADELPHIA, *ss.*

The Commonwealth of Pennsylvania, to the Sheriff of Philadelphia County, greeting:

Whereas, by our writ of fieri facias, we lately commanded you, that of the goods and chattels, lands and tenements, of Isaac Phillips and Joseph L. Moss, trading as R. & I. Phillips, late of your county, in your bailiwick, you should cause to be levied nine thousand five hundred and forty-eight dollars fifty-eight cents, lawful money of Pennsylvania, which the Farmers' Bank of Virginia, to the use of John H. Eustace, were adjudged for their damages, which they, lately, in our District Court for the city and county of Philadelphia, before our judges at Philadelphia, sustained, as well by occasion of the non-performance of a certain promise and assumption by the said defendants to the said plaintiffs, at Philadelphia, in your county, made, as for their charges by them about their suit in that behalf expended, whereof the said defendants are

convict, as appears of record, &c.; and that you should have that money before our judges, at Philadelphia, at our said court, there to be held the first Monday of October then next, to render to the said plaintiffs further damages aforesaid; and that you should have then there that, our said writ. And whereas, you, the same day, before our said judges, returned, that by virtue of our said writ to you directed, you had seized and taken in execution all that certain three story brick messuage or tenement, and lot or piece of ground thereunto belonging, situate on the south side of Walnut street, in the city of Philadelphia; containing in front or breadth on Walnut street, twenty-one feet; and in length or depth southward, one hundred and seventy feet, to a thirty feet wide alley, lately laid out and opened, leading from the said Juniper street to Thirteenth street; bounded, on the north, by said Walnut street; east, by a messuage, or lot of ground, granted by Peter Fritz et ux. to Rowland Stevenson; south by above mentioned thirty feet wide alley; and west, partly by a messuage, or lot of ground, lately granted by Joseph L. Moss et ux. to Sarah Maccoun, and partly by the lot of ground next hereinafter described.

Also, all that certain piece of ground, situate on the north side of the aforementioned thirty feet wide street, and east side of Juniper street, in the said city of Philadelphia, containing in breadth, east and west, fifty-nine feet three inches; bounded on the north by the abovementioned lot of ground, lately granted by Joseph L. Moss et ux. to Sarah Maccoun; east, by the lot of ground first herein described; south, by the aforementioned thirty feet wide alley; and west, by Juniper street aforesaid—subject, with respect to the lot of ground last described, to a certain covenant, restraining the erection of buildings thereon, contained in a certain indenture from the said Joseph L. Moss et ux. to the said Sarah Maccoun, dated twenty-first of November, one thousand eight hundred and thirty-six, recorded in deed-book S. H. F. No. 10, page 297; together with the common use and privilege of the said thirty feet wide alley, with or without horses, cattle and carriages, at all times hereafter forever: together with all and singular the buildings, improvements, ways, streets, alleys, passages, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances, whatsoever thereunto belonging, or in any wise appertaining.

Also, all that four story brick messuage or tenement, and all those three lots or pieces of ground hereinafter described, to wit: All that certain lot, or piece of ground, situate on the south side of Mulberry, or Arch street, at the distance of one hundred and twenty feet west, from the west side of Thirteenth street, in the city of Philadelphia—containing in front, on the said Arch street, twenty-two feet; and in length, or depth, extending southward, one hundred and thirty-seven feet, to a twenty feet wide street, called Paper alley; bounded east by a lot of ground by William Sansom et ux. to William Johnson, on ground rent; south, by said Paper alley;

west, by the next described lot of ground; and north, by Mulberry street aforesaid.

Also, all that certain lot or piece of ground, situate on the south side of said Mulberry street, at the distance of one hnndred and forty-two feet west, from the west side of thirteenth street; containing in front, or breadth, on Mulberry street, twenty-two feet; and in length, or depth, extending south one hundred and thirty-seven feet, to said Paper alley; west, by the next hereinafter described lot of ground; and north, by Mulberry street aforesaid.

Also, all that certain piece, or lot of ground, situate on the south side of Mulberry street, at the distance of one hundred and four feet west, from the west side of Thirteenth street: containing in front, or breadth, on Mulberry street, twenty-two feet; and in length, or depth, southward, to Paper alley, one hundred and thirty-seven feet: bounded east, by the last above described lot of ground; south, by the said Paper alley; west, by a lot of ground, granted by the said William Sansom et ux. to Joseph Donaldson, on ground rent; and north, by Mulberry street aforesaid: together with all and singular the improvements, buildings, ways, streets, alleys, waters, water-courses, passages, rights, liberties, privileges, hereditaments and appurtenances whatsoever unto the said premises belonging, or in any wise appertaining: each of the three last described lots of ground subject to a yearly ground-rent, or sum of $231—each payable half-yearly, on the 23d day of October and April, unto William Sansom, his heirs and assigns, without any defalcation, for taxes.

Also, all that certain lot, or piece of ground, situate on the north side of Chestnut street, at the distance of forty-two feet west, from the west side of Schuylkill Seventh street, in the city of Philadelphia: containing, in front or breadth, on Chestnut street, sixty-six feet; and extending in length, northward, one hundred and fifty-eight feet, to a certain twenty feet wide street, called Linden street—being the same premises which George H. Thompson, and Rebecca, his wife, granted unto the said Isaac Phillips, in fee, by indenture, dated June ninth, A. D. 1835, and duly recorded: bounded east and west, by ground granted to Wm. B. Fling, on ground-rent; north, by said Linden street; and south, by Chestnut street: together with all rights, remedies, and incidents thereunto belonging, or in any wise appertaining. Recorded in deed-book A. M., No. 65, page 538.

Also, all that certain lot, or piece of ground, situate on the westerly side of South Sixth street, and between High and Chestnut streets, in the city of Philadelphia: containing, in breadth, on said Sixth street, twenty-five feet, more or less; and of that breadth, extending in length or depth westward, to Decatur street, one hundred and seventy-five feet, more or less, with the appurtenances. On the premises is erected a four-story, sub-tenanted brick messuage, extending the entire depth of the lot, from Sixth to Deca-

tur street—narrowing in the centre, so as to leave a small side-yard.

Also, all that certain messuage, tenement and four storied warehouse, and lot or piece of ground thereunto belonging, situate on the east side of Delaware Front street, between Walnut and Spruce streets, in the city of Philadelphia; containing in front or breadth, on the said Front street, nineteen feet more or less, and extending in length or depth from said Front street to Water street, forty-one feet seven inches; bounded on the north by a messuage and lot of ground of John McCauley, east by Water street, south by the middle line of the partition-wall between this messuage and the next adjoining messuage to the south, conveyed by Benjamin B. Howell et ux. to Dr. James Dunlap; and west, by Front street aforesaid—being the same premises which Wm. M. Biddle, surviving assignee of the estate of Henry Sergeant, by indenture, dated 24th of November, A. D. 1834, granted to John Sergeant, Esq., in fee; together with the free, and common use, and privilege of the five foot alley, extending from the said Front street to Water street adjoining, and to the southward of the messuage and lot, conveyed by the same Benj. B. Howell et ux. to the said James Dunlap: together with all and singular the buildings, improvements, ways, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging, or in any wise appertaining. Recorded in deed-book G, W, R, No. 10, page 123, which remains in my hands unsold for want of buyers; and the residue of the execution of the writ appears, by reference to a certain schedule or inquisition hereto annexed.

And now, Sheriff makes return to said writ, in the words following, to wit:

Set aside by order of court, and writ quashed.

So answers DAN'L. FITLER, *Sh'ff.*

The above writ is endorsed as follows, to wit:

THE FARMERS' BANK OF VIRGINIA,
to the use of JOHN H. EUSTACE,
vs.
ISAAC PHILLIPS and JOSEPH L. MOSS,
Copartners.

Vendt. Exp's.

Real Debt, - - - - -	$9,541 58
Int. from Jan. 22d, '38, - - -	
Att'y fee, - - - - -	3 87½
Cr. - - - - - -	12½
Prothon'ty, - - - - -	3 12½
Fi. Fa. - - - - -	50
Shff. - - - - -	9 00
Vendt. - - - - -	75

FALLON.

And now, Nov. 24, 1838, on motion of H. M. Phillips, rule to shew cause why the levy, inquisition, condemnation, and venditioni exponas should not be set aside.

And, December 12th, 1838, a precept of the commonwealth, commonly called "an alias Fi. Fa." issues out of our said district court, in the words following, to wit:

CITY AND COUNTY OF PHILADELPHIA, *ss:*

The Commonwealth of Pennsylvania, to the Sheriff of Philadelphia County, greeting:

We command you, as before we did, that of the goods and chattels, lands and tenements, of Isaac Phillips and Joseph L. Moss, copartners, trading as R. & I. Phillips, in your bailiwick, you cause to be levied nine thousand five hundred and forty-eight dollars seventy cents, which, to the Farmers' Bank of Virginia, to the use of John H. Eustace, lately in our District Court for the City and County of Philadelphia, were adjudged for their damages, which they sustained, as well by occasion of the non-performance of a certain promise and assumption by the said defendants to the said plaintiffs, at Philadelphia, in your county made, as for their costs and charges by them about their suit in that behalf expended; whereof the said defendants are convict, as appears of record, &c.

And have you that money before our judges at Philadelphia, at our said court, there to be held, the first Monday of January next, to render to the said plaintiffs for their damages aforesaid: and have you then there this writ.

Witness the Honorable Thomas M. Pettit, president of our said court, at Philadelphia, the 12th day of December, in the year of our Lord one thousand eight hundred and thirty-eight.

Pro F. COMLY, *Prothonotary*,
M. COATS.

The above writ is endorsed as follows, to wit:

THE FARMERS' BANK OF VIRGINIA,
to the use, &c.
vs.
ISAAC PHILLIPS and JOSEPH L. MOSS,
Cop'rs.

Alias Fi. Fa.

Real Debt, - - - - -	$9,541 58
Int. from Jan. 22d, '38, - - -	
Atty's fees, - - - - -	3 87½

Cr.		12½
Proth'y,		3 12½
Fi. Fa.		1 25
Alias Fi. Fa.		50
Shff.		9 00

FALLON.

And now sheriff makes return to said writ, in the words following, to wit:

The execution of the within writ will appear by reference to a certain schedule or inquisition, hereto annexed.

So answers DANL. FITLER, *Shff.*

And now the schedule and inquisition above referred to, appears in the words following, to wit:

Inquisition indented and taken at Philadelphia, the fourth day of January, in the year of our Lord one thousand eight hundred and thirty-nine, before Daniel Fitler, Esquire, high sheriff of the City and County of Philadelphia, by virtue of a writ of the Commonwealth of Pennsylvania, to me directed, and to this inquisition annexed, by oaths and affirmations of the jurors whose names and seals are hereunto annexed, good and lawful men of the county aforesaid, who, upon their oaths and affirmations aforesaid, respectively do say, that the rents, issues, and profits of the within described property, by me, the said sheriff, taken in execution, by virtue of the said writ, wherein the Farmers' Bank of Virginia, to the use of John H. Eustace, is plaintiff, and Isaac Phillips, and Joseph L. Moss, copartners, trading as R. & I. Phillips, are defendants, are not of a clear value beyond all reprizes, sufficient, within the space of seven years, to satisfy the debt and damages in the writ aforesaid mentioned.

In testimony whereof, as well I, the said sheriff, as the inquest aforesaid, have interchangeably set our hands and seals, the day and year first above written.

DANL. FITLER, *Shff.* [L. S.]
C. STEVENSON, [L. S.]
J. B. SMITH, [L. S.]
GEO. JEFFRIES, [L. S.]
BENJ. FRANKLIN, [L. S.]
JOHN DICKSON, [L. S.]
WM. BOYD, [L. S.]
AARON G. HURLEY, [L. S.]
JOSEPH BRELSFORD, [L. S.]
DAVID EVANS, [L. S.]
ROBERT PATTON, [L. S.]
WM. M'BRIDE, [L. S.]
JESSE WILLIAMSON, [L. S.]
JOHN RAKESTRAW. [L. S.]

And now follows a description of eight properties, as above described.

And now, February the 1st, 1839, a precept of the Commonwealth of Pennsylvania, commonly called a "Venditioni Exponas," is issued out of our District Court for the City and County of Philadelphia, in the words following, to wit:

CITY AND COUNTY OF PHILADELPHIA, *ss.*

The Commonwealth of Pennsylvania, to the Sheriff of Philadelphia county, greeting:

Whereas, by our writ of alias fieri facias, we lately commanded you, as before we did, that of the goods and chattels, lands and tenements, of Isaac Phillips and Joseph L. Moss, copartners, trading as R. & I. Phillips, late of your county, in your bailiwick, you should cause to be levied nine thousand five hundred and forty-eight dollars seventy cents, lawful money of Pennsylvania, which, to the Farmers' Bank of Virginia, to the use of John H. Eustace, lately in our District Court for the City and County of Philadelphia, were adjudged for their damages which they sustained, as well by occasion of the non-performance of a certain promise and assumption by the said defendants to the said plaintiffs, at Philadelphia, in your county made, as for their costs and charges by them about their suit in that behalf expended, whereof the said defendants are convict, as appears of record, &c. And that you have that money before our judges at Philadelphia, at our said court, there to be held the first Monday of January, then next, to render to the said plaintiffs damages aforesaid: and that you should have then there that, our said writ. And whereas, you, the same day, before our said judges returned, that by virtue of our said writ, you had seized and taken in execution:

(And now again follows the description of the above described several properties.)

Which remained in your hands unsold, for want of buyers, and therefore you could not have the money in our said writ mentioned, at the day and place in our said writ specified, as therein you were commanded; and that the residue of the execution of our said writ appeared in a certain schedule or inquisition thereto annexed, by which schedule or inquisition it was found that the rents, issues, and profits, of the above described property, in your said return upon our said writ, thereunto annexed, mentioned, are not of a clear value beyond all reprizes, sufficient, within the space of seven years, to satisfy the damages in our said writ mentioned.

Therefore, we command you, that the premises aforesaid, with the appurtenances, you expose to sale, and have you that money

before our judges at Philadelphia, at our said court there to be held, the first Monday of March next, to render to the said plaintiffs for their damages aforesaid; and have you then there this writ.

Witness the Honorable Thomas M. Pettit, Esquire, president of our said court, at Philadelphia, the first day of February, in the year of our Lord one thousand eight hundred and thirty-nine.

Pro WM. WHITE, *Prothonotary*,
M. COATS.

The above writ is endorsed as follows, to wit:

THE FARMERS' BANK OF VIRGINIA,
vs.
ISAAC PHILLIPS and JOSEPH L. Moss,
Cop'rs.

Vend. Expo's.

Real Debt, - - - - -	$9,541 58
Int. from Jan'y 22d, '38, - - -	
Atty's fees, - - - -	3 87½
Cr. - - - - -	12½
Proth'y, - - - - -	3 12½
Fi. Fa. and Vendit. - - -	1 25
Alias Fi. Fa. - - - -	50
Shff. on do. - - - -	9 00
Vendit. - - - - -	75

March 4th, '39. Exchange, 6½ o'clock.

FALLON.

And now, sheriff makes return to said writ, in the words following, to wit:

Stayed by order of court.
So answers DANL. FITLER, *Shff.*
March 4, 1839.

And now, February 28, 1839, on motion of Henry M. Phillips, rule to shew cause why sale should not be stopped. Returnable 4th March, 1839, with stay of proceedings.

And now, March 4th, 1839, a precept of the Commonwealth of Pennsylvania, commonly called an alias venditioni exponas, is issued out of our district court for said city and county, in the words following, to wit:

CITY AND COUNTY OF PHILADELPHIA, *ss:*

The Commonwealth of Pennsylvania, to the Sheriff of Philadelphia County, greeting:

Whereas, by our writ of alias fieri facias, we lately commanded you, as before we did, that of the goods and chattles, lands and tenements of Isaac Phillips and Joseph L. Moss, copartners, trading as R. & I. Phillips, late of your county in your bailiwick, you should cause to be levied nine thousand five hundred and forty-eight dollars and seventy cents, lawful money of Pennsylvania, which to the Farmers' Bank of Virginia, to the use of John H. Eustace, lately in our district court for the city and County of Philadelphia, were adjudged for their damages, which they sustained as well by occasion of the non-performance of a certain promise and assumption by the said defendants to the said plaintiffs, at Philadelphia, in your county, made, as for their costs and charges by them about their suit in that behalf expended, whereof the said defendants are convict, as appears of record, &c.; and that you have that money before our judges at Philadelphia, at our said district court, there to be held the first Monday of January, then next, to render to the said plaintiffs for their damages aforesaid; and that you have then there that said writ.

And whereas, you the same day before our said judges returned, that by virtue of our said writ, you had seized and taken in execution "*the eight several properties as before described*," which remained in your hands unsold for want of buyers, and therefore you could not have the money in our said writ mentioned, at the day and place in our said writ specified, as therein you were commanded, and that the residue of the execution of our said writ appeared in a certain schedule or inquisition thereunto annexed; by which schedule or inquisition, it was found that the rents, issues and profits of the above described property, in your said return upon our said writ thereunto annexed, mentioned, are not of a clear value, beyond all reprizes, sufficient within the space of seven years to satisfy the damages in our said writ mentioned; therefore, we command you, that the premises aforesaid, with the appurtenances, you expose to sale; and have you that money before our judges at Philadelphia, at our said court there to be held the first Monday of April next, to render to the said plaintiffs, for their damages aforesaid; and have you then there this writ.

Witness the Honourable Thomas M. Pettit, Esquire, president of our said court at Philadelphia, the 4th day of March, in the year of our Lord one thousand eight hundred and thirty-nine.

Pro WM. V. PETTIT, *Prothonotary*,
M. COATS.

The above writ is endorsed as follows, to wit:

THE FARMERS' BANK OF VIRGINIA,
vs.
ISAAC PHILLIPS & JOSEPH L. MOSS,
Cop'rs.

"Alias Vendt. Exponas."

Real Debt,	$9,541 58
Int. from Jan'y 22d, '38,	
Att'y and Writ,	3 87½
Cr.	12½
Proth'y.	3 12½
Fi. fa. & Vendt.	1 25
Alias Fi. Fa.	50
Sheriff on do.	9 00
Vendt.	75
Alias,	75

April, 1, '39. FALLON.

And now sheriff makes return to said writ, in the words following, to wit:

To the Honourable the judges within named:

I do certify, that in pursuance and by virtue of the within writ, having given due, fair and legal notice of the time and place of sale, by advertisements in the public newspapers, and by handbills set up in the most public places in my bailiwick, I did, on Monday, April 1st, 1839, at 7 o'clock in the evening, at the Philadelphia Exchange, in the city of Philadelphia, expose the premises in the said writ described, with the appurtenances, to sale, by public vendue or outcry; when Henry M. Phillips, Esquire, bought for John Moss Nos. 3, 4 and 5 together, for the price or sum of twenty-six hundred dollars; and No. 6 to Hugh Kinley, for the price or sum of seventeen hundred and seventy-five dollars; and No. 7 to C. Fallon, for the price or sum of sixteen hundred dollars; and No. 8 to J. M. Moss, for the price or sum of two hundred dollars; they being the highest and best bidders and *that* the highest and best prices bidden for the same; and which sales were set aside by order of court; and as to No. 1 and 2 proceedings stayed. So anwers,

DANIEL FITLER, *Sh'ff.*

And now, April 3d, 1839, on filing affidavit of Is. Phillips, rule to shew cause why the sheriff's sale should not be set aside.

And now, April 3d, 1839, affidavit of defendant filed in the words following, to wit:

FARMERS' BANK OF VIRGINIA *vs.* R. & I. PHILLIPS. } District Court, vendi. expona.

Isaac Phillips, one of these defendants, being sworn, *say:* that the notice by advertisement of the sale under the writ, was not made in any newspaper published in the City or County of Philadelphia once a week during three successive weeks. This *affiant*, upon examination, finds that the advertisements were made as follows:

In the Evening *Starr* on March 7, 8, 18, 19, 20, 21, 22, &c.
" Herald and Sentinel, " 7, 11, 25, &c.
" North American, beginning March 23d; and in no other paper, affiant verily believes. That the said sale took place on April 1, 1839; and that as affiant is advised by his counsel, and verily believes, that Mr. Fallon, the plaintiff's counsel, was before the day of sale advised of these matters, and that a motion to set aside the sale would be made.

IS. PHILLIPS.

Sworn and subscribed, April 3d, 1839.

JOHN BINNS, *Ald'n.*

And now, a rule to take depositions is filed in the words following, to wit:

FARMERS' BANK OF VIRGINIA *vs.* R. & I. PHILLIPS.

D. C. sur Rule to shew cause why Sheriff's sale should not be set aside.

Dear Sir,—The depositions of witnesses in support of this rule will be taken on Wednesday, April 10th, 1839, at 5 o'clock, P. M., at the office of Alderman Binns, So. 6th, below Chesnut st.

Very respectfully, yours,

HENRY M. PHILLIPS.

April 6th, 1839.

Elijah Britton on oath says, that he served, on April 6th, a copy of the above by leaving it at the office of C. Fallon, Esq., and one at office of R. M. Lee, Esq.

ELIJAH BRITTON.

Sworn and subscribed April 10, 1839, before me,

JOHN BINNS.

And now, April 13th, 1839, depositions of witnesses are filed as follows, to wit:

THE FARMERS' BANK OF VIRGINIA
vs.
ISAAC PHILLIPS & JOSEPH L. MOSS, trading as R. & I. PHILLIPS.

In the District Court for the City and County of Philadelphia.

Venditioni exponas to March] term, 1839, sur Rule to shew cause why the Sheriff's sale under this writ should not be set aside.

Henry M. Phillips, Esquire, a witness, in support of this rule, being duly sworn, doth depose and say: I have examined the Daily *Starr*, a newspaper published daily in the City of Philadelphia; that the advertisement, of the sale under this writ, to take place on April 1st, was published in that paper on the 7th day of March, on which day the advertisement bears date; also on the 18th of March, 1839; and was not again published in that paper till the 18th of the same month; after which time, it was published with little intermission till the day of sale; the same advertisement was published also in the Herald and Sentinel, a daily paper published in the City of Philadelphia, on 7th, 11th and 25th of March, 1839, and on no other days during that month. The advertisement was marked "3 times;" the same advertisement was also published in the Pennsylvania Inquirer, also a daily newspaper, on the 7th and 29th days of March only; the same advertisement also appeared in the "North American," the publication of which paper was commenced in this city on the 23d of March, on that day and but with little intermission until the day of sale. I have looked through all or nearly all the daily papers published in the city or county of Philadelphia, and the advertisement of the sale under this writ was not in any of them, except as is above mentioned; and inquired at the Sheriff's office in what papers the Sheriff advertised his sales of real estate, and was informed by Mr. Paul, I believe the chief clerk, that the advertisements were made in the Evening *Starr* and Herald, and occasionally in the Inquirer. I gave notice to the Sheriff, through his officer, Mr. *Pohl*, that this examination would take place at this time and place. I was at the Sheriff's sale, and the properties described as 3, 4 and 5 were, by direction of Mr. Fallon, plaintiff's counsel (and objected to by me at the time,) *were* sold together as one property.

Cross-examined by C. Fallon for the plaintiff.

I am counsel for the defendants, for D. Samuel, J. Moray Moss, assignees of defendants, who claim to own three of the properties

sold as belonging to the defendants, for John Moss, who *own* all the interest ever possessed by either of these defendants in No. 3, 4 and 5, that is, the Arch street property; and make this application to set aside the Sheriff's sale on behalf of the whole of them. Mr. Ingraham is also the counsel of the assignees, and Mr. Josiah Randall is also with me as counsel for the defendants. I gave notice at the sale, that properties No. 3, 4 and 5 did not belong to John Moss or either of them, nor had either of them any interest in the same. I did not state to whom they did belong. Mr. Ingraham gave notice at the sale that Nos. 6, 7 and 8 did not belong to the defendants or either of them; that Nos. 6 and 7 belonged to David Samuel & J. Moss, assignees of the defendants, and No. 8 to Joseph Gratz; and I both gave notice, that no title would be acquired by the purchaser at that sale. This notice was given publicly at the sale, from the auctioneer's stand. I believe that Henry Pratt and Godfrey Weber are the trustees of each of these defendants. Both these defendants are now here.

HENRY M. PHILLIPS.

Sworn and subscribed April 10, 1839, before
JOHN BINNS, *Ald'n.*

Joseph L. Moss, a witness produced in support of the rule, being duly sworn, doth depose and say: I have examined the daily papers in the city of Philadelphia, and found the publication of the advertisements of the sale under this writ to correspond with the statement just made by Mr. Phillips. I am one of the defendants; I never owned nor *never* had any interest in the properties No. 3, 4 and 5. *At* the time this judgment was obtained, I had no interest, nor have had *none* since, in any of the properties sold by the Sheriff. Nos. 6 and 7 *belongs* to D. Samuel and Jos'h Moray Moss. They were conveyed to them by a deed, the 22d June, 1837; No. 8 belongs to Joseph Gratz; it was included in the deed of June 22d, 1837, and has since been sold by the assignees to Joseph Gratz.

Cross-examined by C. Fallon, Esq., for plaintiffs.

No. 6 and 7 consist of the American House, in Sixth street, and of a lot on Chesnut street. The title of the American House was at the time of the assignment in the name of Robert Phillips, who at that time was dead, and belonged to the late firm of R. & I. Phillips. The American Hotel was afterwards purchased and greatly improved with the funds of R. and I. Phillips entirely. I did not then belong to that firm of R. and I. Phillips. That firm of R. & I. Phillips consisted of Robert Phillips (since deceased, and IsaacPhillips;) after the dissolution of that firm, the said Isaac Phillips and myself became associated in business under the same title. The new firm took all the estate of the old firm, assumed the payment of the debts, and continued the business for the old firm.

JOSEPH L. MOSS.

Sworn and subscribed before me, April 10th, 1839.
JOHN BINNS, *Ald'n.*

And now, April 24, A. D. 1839, a precept of the Commonwealth of Pennsylvania, commonly called a "pluries venditioni exponas," is issued out of our District Court for said city and county of Philadelphia, in the words following, to wit:

CITY AND COUNTY OF PHILADELPHIA, *ss.*

The Commonwealth of Pennsylvania to the Sheriff of Philadelphia county, greeting:

Whereas, by a certain writ of alias levari facias, we lately commanded you, as before we did, that of the goods and chattels, lands and tenements of Isaac Phillips and Joseph L. Moss, co-partners, trading as R. and I. Phillips, late of your county, in your bailiwick, you should cause to be levied nine thousand five hundred and forty-eight dollars seventy cents, lawful money of Pennsylvania, which to the Farmers' Bank of Virginia, to the use of John H. Eustace, lately in our District Court for the city and county of Philadelphia were adjudged for their damages, which they sustained as well by occasion of the non-performance of a certain promise and assumption by the said defendants to the said plaintiffs, at Philadelphia, in your county, made, as for their costs and charges by them about their suit in that behalf expended, whereof the said defendants are convict, as appears of record, &c., and that you should have that money before our Judges at Philadelphia, at our said Court there to be held the first Monday of January, then next, to render to the said plaintiffs damages aforesaid; and that you should have then there that, our said writ. And, whereas, you the same day, before our said Judges, returned, that by virtue of our said writ you had seized and taken in execution—

(And now follows a description of eight properties as particularly herein before described.)

Which remained in *my* hands unsold for want of buyers; and therefore you could not have the money in our said writ mentioned at the day and place in our writ specified, as therein you were commanded; and that the residue of the execution of our said writ appears in a certain schedule or inquisition thereunto annexed, by which schedule or inquisition, it was found that the rents, issues and profits of the above described property in your said return upon our said writ thereunto annexed mentioned, are not of a clear value, beyond all reprizes, sufficient within the space of seven years to satisfy the damages in our said writ mentioned. Therefore, we command you, as before we often did, that the premises aforesaid with the appurtenances you expose to sale; and have you that money before our Judges at Philadelphia, at our said Court, there to be held the first Monday of June next, to render to the said plaintiffs for their damages aforesaid; and have you then there this writ.

Witness the Honorable Thomas M. Pettit, Esq., president of our said court at Philadelphia, the 24th day of April, in the year of our Lord one thousand eight hundred and thirty-nine.

Pro WM. V. PETTIT, *Prothonotary*,
M. COATS.

The above writ is endorsed, as follows:

THE FARMERS' BANK OF VIRGINIA,
vs.
ISAAC PHILLIPS & JOSEPH L. Moss, Copartners.

"Pluries venditioni exponas."

Real debt - - - - -	$9,541 58
Int. from January 22d, 1838 - - -	
Atty. and action - - - - -	3 87½
Cr. - - - - - -	12½
Fi. Fa. ret. - - - - -	1 25
Proth'y - - - - - -	3 12½
Alias Fi. Fa. - - - - -	50
Sheriff - - - - - -	9 00
Ven. al. - - - - - -	1 50
Pluries - - - - - -	75

FALLON.

(M. 39—244.)

And now, sheriff makes return to said writ, in the words following, to wit:

To the Honorable the Judges within named.

I do certify, that in obedience to the within writ, (after having given due and legal notice of the time and place of sale,) did, on Monday, the twentieth day of May, A. D. 1839, at the Philadelphia Exchange, expose the lands and premises in the within writ described, to public sale or vendue, and sold the messuage and three several lots, first, second and third, within described, to John Moss, of the City of Philadelphia, gentleman, for the price or sum of two hundred dollars; the messuage ware-house and lot 6th, within described, to David Samuel and Joseph M. Moss, for the price or sum of two hundred dollars; and the messuage and lot fourth, fifth, seventh and eighth, within described, to Christopher Fallon, of the City of Philadelphia, in manner following, that is to say: the premises fourth described, for the price or sum of one hundred and fifty dollars; the premises fifth described, for the price or sum of one hundred and fifty dollars; the premises seventh described, for the price or sum of one hundred dollars,

(subject nevertheless to a certain mortgage debt or principal sum of eight thousand dollars with interest;) and the premises eighth described, for the price or sum of two hundred and fifty dollars; they being the highest and best bidders, and those the highest and best prices severally bidden for the same; which said several sums of money, amounting in the whole to one thousand nine hundred and fifty dollars, I have ready at the day and place within specified, to render as within I am commanded.

So answers

DANL. FITLER,
Sheriff.

Whereupon, it is considered by our said court, that the said plaintiff, "the Farmers' Bank of Virginia," do recover against the said defendants, Isaac Philipps and Joseph L. Moss, cop's, the sum of nine thousand five hundred and forty-one dollars and fifty-eight cents, damages aforesaid; as also, the further sum of seven dollars and twelve cents costs and charges, by them about their suit in that behalf expended, making together the sum of nine thousand five hundred and forty-eight dollars and seventy cents; and the said plaintiff in mercy, &c.

Certified from the record, February 20th, A. D. 1840.

Pro WM. V. PETTIT, *Prot'y.*
CHARLES C. McCARAHER.

(Copy.)

PHILADELPHIA CITY AND COUNTY, *ss.*

I, William V. Pettit, Esquire, prothonotary of the district court for the City and County of Philadelphia, do certify, that the foregoing is a true copy of the record in the case there stated, excepting where reference is made to the description of the property first described, which is in all the cases referred to described in full; and also the amicable action and agreement, which is copied from the docket, so far as the same was entered in the docket, (it not having been copied in full on the docket,) the original not being found, search having been made for the same.

In testimony whereof, I have hereunto set my hand and [L. S.] affixed the seal of the said court, the seventh day of May, eighteen hundred and forty.

(Signed,) WM. V. PETTIT,
Prothonotary.

PHILADELPHIA CITY AND COUNTY, *ss.*

I, Thomas M. Pettit, Esq., president of the district court for the City and County of Philadelphia, do certify, that the foregoing re-

cord and attestation, made by William V. Pettit, Esq., prothonotary of the said court, whose name is thereto subscribed, and seal of office affixed, are in due form and made by the proper officer.

In testimony whereof, I have hereunto set my hand, the seventh day of May, eighteen hundred and forty.

(Signed,) T. M. PETTIT.

PHILADELPHIA CITY AND COUNTY, *ss.*

I, William V. Pettit, Esq., Prothonotary of the district court for the City and County of Philadelphia, do certify, that the Honorable Thomas M. Pettit, Esquire, by whom the foregoing attestation is made, whose name is thereto subscribed, was, at the time of making thereof, and still is, president judge of the district court of the City and County of Philadelphia, duly commissioned and sworn; to all whose acts, as such, full faith and credit is and ought to be given, as well in courts of justice as elsewhere.

In testimony whereof, I have hereunto set my hand and [L. S.] affixed the seal of said court, the seventh day of May, eighteen hundred and forty.

(Signed,) WM. V. PETTIT,
Prothonotary.

No. 5.—I, Daniel Fitler, Esquire, High Sheriff of and for the City and County of Philadelphia, in the Commonwealth of Pennsylvania, to all to whom these presents shall come, send greeting:

Whereas, by a writ of alias fieri facias, I was lately commanded, as before I had been commanded, that of the goods and chattels, lands and tenements, of Isaac Phillips and Joseph L. Moss, copartners, trading as R. and I. Phillips, late of my county, in my bailiwick, I should cause to be levied nine thousand five hundred and forty-eight dollars seventy cents, lawful money of Pennsylvania, which to the Farmers' Bank of Virginia, to the use of John H. Eustace, lately in the district court for the City and County of Philadelphia, were adjudged for their damages, which they sustained as well by occasion of the non-performance of a certain promise and assumption by the said defendants to the said plaintiffs at Philadelphia, in my county made, as for their costs and charges by them about their suit in that behalf expended, whereof the said defendants are convict, as appears of record, &c.; and that I should have that money before the judges at Philadelphia, at the said court there to be held the first Monday of January then next, to render to the said plaintiffs for their damages aforesaid; and that I should have then there that, the said writ. And whereas, I the same day before the said judges returned, that by virtue of the said writ I had seized and taken in

execution, (inter alia,) No 4, all that certain lot or piece of ground, situate on the north side of Chesnut street, at the distance of forty-two feet west, from the west side of Schuylkill Seventh street, in the City of Philadelphia, containing in front or breadth on Chesnut street sixty-six feet, and extending in length or depth northward one hundred and fifty-eight feet, to a certain twenty feet wide street, called Linden street; being the same premises which George H. Thompson and Rebecca, his wife, granted to the said Isaac Phillips in fee, by indenture, dated June ninth, A. D. 1835, and duly recorded; bounded east and west by ground granted to William B. Fling on ground rent; north by the said Linden street, and south by Chesnut street; together with all the rights, remedies and incidents thereunto belonging or in any wise appertaining; recorded in deed book A. M., No. 65, page 538, &c.; No. 5, all that certain lot or piece of ground, situate on the westerly side of south Sixth street, between High and Chesnut streets, in the City of Philadelphia, containing in breadth on said Sixth street twenty-five feet, more or less, and of that breadth extending in length or depth westward to Decatur street one hundred and seventy-five feet, more or less, with the appurtenances; on the premises is erected a four story substantial brick messuage, extending the entire depth of the lot from Sixth to Decatur streets, narrowing on the centre, so as to leave a small side yard. No. 7, all that certain three story brick *brick* messuage or tenement and lot or piece of ground thereunto belonging, situate on the south side of Walnut street, in the City of Philadelphia, containing in front or breadth on Walnut street twenty-one feet, and in length or depth southward one hundred and seventy feet, to a thirty feet wide alley, lately laid out and opened, leading from the said Juniper street to Thirteenth street; bounded on the north by said Walnut street, east by a messuage and lot of ground, granted by Peter Fritz et ux. to Rowland Stevenson; south by the above mentioned thirty feet wide alley, and west partly by a messuage and lot of ground granted by Joseph L. Moss et ux. to Sarah Maccoun, and partly by the lot of ground next hereinafter described. No. 8, all that certain piece of ground situated on the north side of the aforementioned thirty feet wide street, on the east side of Juniper street, in the City of Philadelphia, containing in breadth east and west fifty nine feet three inches, and in depth twenty-one feet; bounded on the north by the above mentioned lot of ground, lately granted by Joseph L. Moss et ux. to Sarah Maccoun; east by the lot of ground last herein described; south by the aforesaid thirty feet wide alley, and west by Juniper street aforesaid; subject, with respect to the lot of ground last above subscribed, to a certain covenant restraining the erection of buildings thereon, contained in certain indenture from the said Joseph L. Moss et ux. to the said Sarah Maccoun, dated twenty-first day of November, one thousand eight hundred and thirty-six; recorded in deed

book S. H. F., No. 10, page 297, &c.; together with the common use and privilege of the said thirty feet wide alley, with or without horses, cattle and carriages, at all times hereafter forever; together with all and singular the buildings, improvements, ways, streets, alleys, passages, waters, water courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging or in any way appertaining, which remained in my hands unsold for want of buyers, and therefore I could not have the money in the said writ mentioned, at the day and place the said writ specified, as therein I was commanded, and that the residue of the execution of the said writ appeared in a certain schedule or inquisition thereunto annexed; by which schedule or inquisition it was found, that the rents, issues and profits of the property in my said return upon the said writ thereunto annexed, mentioned, were not of a clear yearly value beyond all reprizes sufficient within the space of seven years to satisfy the damages in the said writ mentioned.

Therefore, by a certain writ of pluries venditioni exponas, to me directed, tested at Philadelphia, the twenty-fourth day of April last past, I was commanded, as before I had often been commanded, that the premises in said writ described, with the appurtenances, I should expose to sale; and that I should have that money before the Judges at Philadelphia, at the said court there to be held the first Monday of June, then next, to render to the said plaintiffs for their damages aforesaid. In pursuance whereof, I, the said sheriff, having first given due and legal notice of the time and place of sale, by advertisements in the public newspapers, and handbills set up in the most public places, in my baliwick, did, on Monday, the twentieth day of May last past, at the Philadelphia Exchange, at eight o'clock in the evening, expose the premises in the said writ described, separately, to public sale or vendue, when Christopher Fallon, of the city of Philadelphia, counsellor at law, bought above described premises for the following prices or sums, to wit: The premises first described, for the price or sum of one hundred and fifty dollars. The premises second described, for the price or sum of one hundred and fifty dollars. The premises third described, for the price or sum of one thousand dollars, (subject, nevertheless, to a certain mortgage debt, principal sum of eight thousand dollars, with interest;) and the premises last described, for the price or sum of two hundred and fifty dollars, he being the highest and best bidder, and those the best prices severally bidden for the same.

Now know ye, that I, the said sheriff, for and in consideration of the said four several sums, amounting together, to one thousand five hundred and fifty dollars, lawful money, to me in hand paid by the said Christopher Fallon, at the time of execution hereof, the receipt whereof, I do hereby acknowledge, have granted, bargained, sold, and confirmed, and by these presents, by force and virtue of the said last recited writ, and the constitution and laws of

the said commonwealth, in such case made and provided, do grant, bargain, sell and confirm unto the said Christopher Fallon, his heirs and assigns, all those, the above four described lots or pieces of ground, together with the buildings thereon erected, situate, butted, bounded and described, as the same are herein above particularly, respectively mentioned, set forth and specified, together with the common use and privilege of the above mentioned twenty feet wide street; and together with all and singular, the buildings, improvements, ways, streets, alleys, passages, waters, water-courses, rights, liberties, privileges, hereditaments, and appurtenances whatsoever, thereunto respectively belonging, or in any wise appertaining; and the reversions, remainders, rents, issues and profits thereof; to have and to hold all and singular, the hereditaments and premises hereby granted or mentioned, and intended so to be, with the appurtenances, unto the said Christopher Fallon, his heirs and assigns, to and for his and their own proper use and behoof, forever; according to the form and effect of the laws and usage of the said commonwealth in such case made and provided, under and subject, as respects the premises third above described, to the payment of the above mentioned mortgage debt, or principal sum of eight thousand dollars.

In witness whereof, I, the said sheriff, have hereunto set my hand and seal, the twenty-second day of June, in the year of our Lord one thousand eight hundred and thirty-nine.

DANIEL FITLER, *Sh'ff.* [L. S.]

Sealed and delivered in the presence of us,

WM. PAUL,
ISAIAH RIGER.

Received the day of the date of the above written deed poll, of the above named Christopher Fallon, the sum of one thousand five hundred and fifty dollars, being the full consideration money above mentioned.

DAN'L FITLER, *Sh'ff.*

Witnesses at signing,
WM. PAUL,
ISAIAH RIGER.

PHILADELPHIA CITY AND COUNTY, *ss:*

Acknowledged in open court, held at Philadelphia, for the city and county of Philadelphia, this twenty-second day of June, anno Domini 1839, and entered among the records thereof, in book H, page 454, &c.

[L. S.] Certified under my hand and seal of same court.

Pro WILLIAM V. PETTIT, *Prothonotary.*
WM. H. COLEMAN.

Endorsed on the back of the within deed, was the following:

Acknowledged in open court, June 22, 1839.

AUG. A. ESPY.
Pro Proth'y.

No. 6.—This indenture, made the eleventh day of September, in the year of our Lord one thousand eight hundred and thirty-nine, between Christopher Fallon, Esquire, of the city of Philadelphia, and Sarah L., his wife, of the one part, and John H. Eustace, Esquire, of the city of Richmond, in the State of Virginia, of the other part, witnesseth: that the said Christopher Fallon, Esq., and Sarah L., his wife, for and in consideration of the sum of two thousand dollars, lawful money of the United States of America, unto them well and truly paid by the said John H. Eustace, Esq., at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released and confirmed, and by these presents do grant, bargain, sell, alien, enfeoff, release and confirm unto the said John H. Eustace, Esq., all those four certain lots or pieces of ground, with the several messuages or tenements thereon erected, to wit:

No. 1. All that certain lot or piece of ground situate on the north side of Chestnut street, at the distance of forty-two feet west from the west side of Schuylkill Seventh street, in the city of Philadelphia; containing in front or breadth on said Chestnut street, sixty-six feet, and extending in length or depth northward, one hundred and fifty-eight feet, to a certain twenty feet wide street, called Linden street; bounded on the east and west by ground granted to William B. Fling, on ground rents, and on the north by the said Linden street, and on the south by the said Chestnut street.

No. 2. All that certain lot or piece of ground situate on the west side of south Sixth street, between High and Chestnut streets, in the city of Philadelphia aforesaid, containing in front or breadth on said Sixth street, twenty-five feet more or less, and of that breadth extending in length or depth westward to Decatur street, one hundred and seventy-five feet, more or less, together with a four story brick house or messuage thereon erected, extending the entire depth of the lot from Sixth to Decatur streets, and narrowing in the centre so as to leave a small side yard.

No. 3. All that certain lot or piece of ground with the three story brick messuage or tenement thereon erected, situate on the south side of Walnut street, in the city of Philadelphia aforesaid, containing in front or breadth on said Walnut street, twenty-one feet, and in length or depth southward one hundred and seventy feet, to a thirty feet wide alley, lately laid out and opened, leading from Juniper street to thirteenth; bounded on the north by the said Walnut street; east by a messuage and lot ground granted by Peter

Fritz et ux. to Rowland Stevenson; south by the above mentioned thirty feet wide alley, and west partly by a messuage and lot of ground granted by Joseph L. Moss et ux. to Sarah Maccoun, and partly by the next hereinafter described premises.

No. 4. All that certain lot or piece of ground, situate on the north side of the above mentioned thirty feet wide alley, and on the east side of the said Juniper street, in the city of Philadelphia aforesaid, containing in breadth east and west fifty-nine feet three inches, and in length or depth north and south twenty-one feet; bounded on the north by the above mentioned lot of ground, lately granted by Joseph L. Moss et ux. to Sarah Maccoun; east by the lot of ground last above described; south by the aforesaid thirty feet wide alley, and west by Juniper street aforesaid; subject, with respect to the lot of ground last above described, to a certain covenant restraining the erection of buildings thereon, contained in a certain indenture from the said Joseph L. Moss et ux. to the said Sarah Maccoun, dated the twenty-first day of November, one thousand eight hundred and thirty-six, recorded in deed book S, H, F, No. 10, page 297, &c.; together with the common use and privilege of said thirty feet wide alley, with or without horses, cattle and carriages, at all times hereafter, forever; together with all and singular the buildings, improvements, ways, streets, alleys, passages, waters, water courses, rights, liberties, hereditaments and appurtenances whatsoever thereunto belonging, or in any wise appertaining.

The above several premises being the same which, by Deed Poll bearing date the twenty-second day of June, in the year of our Lord one thousand eight hundred and thirty-nine, Daniel Fitler, Esquire, high sheriff of the city and county of Philadelphia, granted and conveyed to Christopher Fallon, Esq., in fee, recorded among the records of the District Court of the county of Philadelphia, in deed book H, page 454, &c.; together with all the estate, right, title and interest, property, claim, and demand whatsoever, of Christopher Fallon, Esq., and Sarah L., his wife, in law, equity, or otherwise howsoever, of, in and to the same, and to the same and every part thereof. To have and to hold the said four lots or pieces of ground, hereditaments and premises hereby granted or mentioned, and intended so to be, with the appurtenances, unto the said John H. Eustace, his heirs and assigns, to and for the only proper use and behoof of the said Henry W. *Moncure*, his heirs and assigns forever; and the said Christopher Fallon and Sarah L., his wife, their heirs, executors and administrators, do, by these presents, covenant, grant and agree, to and with the said John H. Eustace, his heirs and assigns, that they, the said Christopher Fallon and Sarah L., his wife, and their heirs, all and singular, the hereditaments and premises herein granted or mentioned, and intended so to be, with the appurtenances, unto the said John H. Eustace, his heirs and assigns, against them, the said Christopher Fallon and

Sarah L., his wife, and their heirs, and against all and every other person or persons whomsoever, lawfully claiming or to claim the same or any part thereof, by, from or under them, shall and will warrant, and forever defend.

In witness whereof, the said parties to these presents have hereunto interchangeably set their hands and seals, dated the day and year first above written.

CHRISTOPHER FALLON, [L. S.]
SARAH L. FALLON. [L. S.]

Sealed and delivered in the presence of us,
JOHN H. VOGDES,
JOHN FALLON.

Received of the above named John H. Eustace, the day of the date of the above written indenture, two thousand dollars, being the full consideration money above mentioned.

CHRISTOPHER FALLON.

Witnesses at signing,
JOHN VOGDES,
JOHN FALLON.

The twelfth day of September, anno Domini 1839, before me, the subscriber, an Alderman of the city of Philadelphia, came the above named Christopher Fallon, and Sarah L., his wife, and acknowledged the above written indenture to be their act and deed, and desired that the same might be recorded as such; she, the said Sarah L., being of full age, and by separate and apart from her husband, declared that she sealed, and as her act and deed delivered the said indenture voluntarily, and of her own free will and accord, without any coercion or compulsion of her said husband, and the full contents thereof being, by me, first made known to her.

Witness my hand and seal.

JOHN VOGDES, *Ald.* [L. S.]

No. 15.

Robert G. Herring, et ux., to Robert Phillips.

This indenture made the ninth day of June, in the year of our Lord one thousand and thirty-two, between Robert G. Herring, of the city of Philadelphia, merchant, and Louisa, his wife, of the one part, and Robert Phillips, of the city of Philadelphia, merchant, of the other part: Whereas, George Rees, Esquire, high sheriff of the city and County of Philadelphia, by deed poll, under his hand and seal, bearing even date herewith, and duly executed and acknowledged, in open district court, for the said city and county, immediately before the execution of these presents, for the consideration or sum of sixteen thousand and fifty dollars, therein

mentioned, did grant and convey unto the said Robert G. Herring, his heirs and assigns, all that certain three story brick messuage or tenement; and also all that two story brick messuage and lot or piece of ground, situate on the westerly side of South Sixth street, between High and Chestnut streets, in the city of Philadelphia, containing in breadth, on the said Sixth street, twenty-five feet, more or less, and of that breadth, extending in length or depth westward to Decature street, one hundred and seventy-three feet, more or less, with the appurtenances, as in, and by the said recited deed poll, now left to be entered among the records of the said court, reference thereunto being had, may more fully appear; and whereas the sum of thirteen thousand aad fifty dollars, part of the above mentioned consideration money, paid to the said sheriff, for the above described premises, was paid and advanced by the said Robert Phillips, with his own proper monies: Now this indenture witnesseth: that the said Robert G. Herring, and Louisa, his wife, as well for and in consideration of the aforesaid sum of thirteen thousand and fifty dollars, having been paid and advanced by the said Robert Phillips, as herein above recited, as of the sum of three thousand dollars, lawful silver money of the United States of America, unto them well and truly paid, by the said Robert Phillips, at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released and confirmed, and by these presents, do grant, bargain, sell, release and confirm, unto the said Robert Phillips, his heirs and assigns, all that the aforesaid three story brick messuage or tenement, two story brick messuage or tenement and lot or piece of ground, situate on the west side of Delaware Sixth street, between High and Chestnut streets, in the said city of Philadelphia, containing in breadth, on the said Sixth street, twenty-five feet, be the same more or less, and extending of that breadth, in length or depth westward to Decatur street, one hundred and seventy-three feet, be the same more or less: together with all and singular, other the buildings, and improvements, ways, alleys, passages, waters, water-courses, rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereunto belonging, or in anywise appertaining, and the reversions and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, property, claim and demand whatsoever of them, or either of them, the said Robert G. Herring, and Louisa, his wife, of, in, and to the same, and every part thereof: to have and hold the said messuages, tenements, and lot or piece of ground herein above described, hereditaments and premises hereby granted, or mentioned and intended so to be, with the appurtenances, unto the said Robert Phillips, his heirs and assigns, to and for the only proper use and behoof of the said Robert Phillips, his heirs and assigns for ever. And the said Robert G. Herring, for himself, his heirs, executors, and administrators, doth by these presents covenant and agree, with

the said Robert Phillips, his heirs and assigns, that he, the said Robert G. Herring, and his heirs, all and singular, the hereditaments, and premises hereby granted, or mentioned, and intended so to be, with the appurtenances, unto the said Robert Phillips, his heirs and assigns, against him, the said Robert G. Herring, and his heirs, and against all and every other person, and persons whomsoever, lawfully claiming or to claim the same or any part thereof, by, from or under him, them or any of them, shall and will warrant and forever defend.

In witness whereof, the said parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.

R. G. HERRING, [L. S.]
LOUISA A. HERRING. [L. S.]

Sealed and delivered in the presence of us,
G. BARTRAM,
J. RANDALL.

Received the day of the date of the above written indenture, of the above named Robert Phillips, the sum of three thousand dollars, which, together with the sum of thirteen thousand and fifty dollars previously paid, and advanced by the said Robert Phillips, as above recited, is the full consideration money above mentioned.

R. G. HERRING.

Witnesses at signing,
G. BARTRAM,
J. RANDALL.

The ninth day of June, anno Domini 1832, before me, the subscriber, one of the Aldermen of the city of Philadelphia, personally appeared the above named Robert G. Herring, and Louisa, his wife, and acknowledged the above written indenture to be their act and deed, and desired the same, as such, might be recorded, according to law. The said Louisa, being of full age, by me, separate from her said husband, examined, and the contents of the said indenture being made known unto her, did declare, that she did voluntarily and of her own free will and accord, seal, and as her act and deed, deliver the said indenture, without any compulsion or coercion of her said husband.

Witness my hand and seal, the day and year aforesaid.

G. BARTRAM, *Ald.* [L. S.]

Recorded in the office for recording of deeds, &c., for the city and county of Philadelphia, in deed book A. M., No. 24, p. 759, &c.

Witness my hand and seal of office, this 23d day of August, A. D. 1832.

A. M'CARAHA, *Recorder.*

No. 14.

Tax Receipts.

Rec., Oct. 20th, 1837, of Jos. M. Moss and D. Samuel, assignees of R. & I. Phillips, one hundred and five dollars, in full for taxes for Chestnut ward, for 1837, on ac. county and poor taxes, on estate in 6th street.

$105.

(Signed,) C. ALBRIGHT, *Coll'r.*

Rec'd, Nov. 7th, 1837, of J. M. Moss and David Samuel, assignees of R. & I. Phillips, fifty-three dollars and ninety cents, on ac't and in full for taxes for middle ward, 1837—rate 30-80, city 70, $21 56-100; county 65, $20 02; poor 40, $12 82-100; $58 20-100.

$53 90-100.

(Signed,) DANIEL McCURDY, *Coll.*

Rec., Aug. 27th, 1836, of Isaac Phillips, Esquire, ninety-five dollars, in full for county and poor taxes, on his estate South 6th st., Chestnut ward, for 1836.

$95.

(Signed,) C. ALBRIGHT, *Coll.*

Re'd, Oct. 10th, 1836, of R. & I. Phillips, one hundred and three 83-100 dollars, in full for city, county and poor taxes, for 1836, on lot in middle ward.

$103 83-100.

(Signed,) DANIEL McCURDY.

No. 13.—Notices.

EUSTACE, *vs.* HANSON. } Circuit Court of U. S.

The defendants are requested to produce on the trial of this cause:

1.—A bill of sale of certain articles of furniture, from Isaac Phillips to Joseph M. Moss, under date of the third of June, 1837, and all checks, entries in books of account, or other documents touching the same.

2.—A certain bond executed by John Moss, to or in favour of Joseph L. Moss; to prove the consideration thereof, and exhibit all entries, receipts and other documents touching said bond; it is dated 24th March, 1837.

3.—A deed dated 20th March, 1837, from Joseph L. Moss to D—— Samuel, for certain premises in Walnut street, and the

deed from D. Samuel to Joseph L. Moss, dated 25th of same month; as also all entries in accounts, vouchers, checks and other documents, touching each of said transfers.

4.—All deeds and title papers held by them or any of them, for or concerning the real estate in South Sixth st., and in Chestnut street; (the subject of this suit.)

5.—A letter from C. Fallon, Esq., dated 26th April, 1839, or notice, touching an alleged deed of assignment, dated 22d June, 1837, and all notices received by them touching said alleged deed; also all notices given by them or any of their attornies at any sale or sales of the real estate of said defendants or any of them, at the suit of the Bank of Virginia.

6th.—A certain indenture of assignment, R. & I. Phillips to Jos. M. Moss and D. Samuel, dated 22d March, 1837.

FALLON,
CONSTANT GUILOU,
for Plaintiffs.

HENRY CHESTER, ESQ.
October, 19, '40.

LESSEE OF EUSTACE, *vs.* HANSON, *et al.* } 13.

Circuit Court U. S.—Dist. Court, October sessions, 1839.

Be pleased to take notice, that you are required to produce the lease to Catharine A. Yohe, and under which she occupied the American House, in South 6th street, part of the property in dispute.

Truly yours, &c.
CHRISTOPHER FALLON,
for Plaintiffs.

MESSRS. CHESTER, INGERSOLL,
INGRAHAM & HEN. PHILLIPS,
for Defendants.

Oct. 28th, 1840.

LESSEE OF EUSTACE, *vs.* HANSON. } No. 13.

Ct. Ct. U. S.—October sessions, 1839.—No. 19.

SAME, *vs.* MOSS. }

Ct. Ct. U. S.—October sessions, 1839.—20.

DR. SIR,—Be pleased to take notice, that on the trial of above

causes, you will be required to produce the books of original entry, day books, ledgers and journals, and generally all books of account of the late firm of R. & I. Phillips, from the year 1831, to the time of their assignment in June, 1837; also the tax receipts for the properties in dispute, in above cases, for every year from 1831 to 1839 inclusive.

GUILLOU,
FALLON,
for Plaintiffs.

HENRY CHESTER, ESQ.
Oct. 22d, 1840.

No. 12.

Agreement between R. & I. Phillips and D. Saint.

Agreement made between Daniel Saint, on the one part, and R. & I. Phillips on the other part, for the lease of the house, No. 20 South 6th street, a hotel, for the term of 4 years, to wit:

R. & I. Phillips are (as the house is large) to assist in furnishing to the amount of one thousand dollars, which sum is to be refunded by Daniel Saint in the first year of the lease, say two hundred and fifty dollars on the 1st April, 1835; two hundred and fifty dollars on the 1st of July, 1835; two hundred and fifty dollars 1st October, 1835; and two hundred and fifty dollars on 1st January, 1836, when the furniture (except the 2 sideboards and 2 looking-glasses in the recesses in the dining room,) and stock in the house will be considered as belonging to said Daniel Saint.

R. & I. Phillips agree to lease to D. Saint, and D. Saint agrees to enter on the premises for four years, as follows: the first year D. S. is to have free of any charge of rent; the remaining three years D. S. is to pay sixteen hundred dollars per annum, in quarterly payments. R. & I. P. to do all the necessary and requisite repairs about and on the premises. In the lower dining room, R. & I. P. have placed in the recess a mahogany sideboard and looking-glass, and the dining room in the second story; the same has been put there as fixtures belonging to the building, and are to be left by D. Saint in like good condition, barring usual wear and tear; if not, to be so made by D. Saint.

R. & I. PHILLIPS,
DANIEL SAINT.

Signed in the presence of us, 1st day of January, 1835,
JONAS M. LEE,
J. R. WELSH.

No. 16.

November, 1837—No. 72.

At an Orphan's Court for the City and County of Philadelphia,

held at Philadelphia on the seventeenth day of November, A. D. 1837, before the Honorable Howard King, President, and the Honorable John R. Jones, Justices of said court.

In the matter of the estate of Robert Phillips, deceased.

The petition of Isaac Phillips, of the city of Philadelphia, administrator of all and singular the goods and chattels, rights and credits, which were of said decedent in his lifetime, was presented, setting forth:

That the said Robert Phillips, in his lifetime, and on the day of his death, which took place on the day of December, 1833, was seised in fee of all that certain three story brick messuage or tenement, and also all that certain two story brick messuage and lot, or piece of ground, situate on the westerly side of South Sixth street and between High and Chesnut streets, in the city of Philadelphia, containing in breadth on the said Sixth street twenty-five feet, more or less, and of that breadth extending in length or depth westward to Decatur street one hundred and seventy-five feet, more or less, with the appurtenances.

That the said Robert Phillips, at the time of his death, possessed no personal property, and the petitioner could not, therefore, exhibit a true and perfect inventory and conscionable appraisement thereof; but the whole of the real estate owned by said decedent is above stated and set forth.

That the said Robert Phillips was indebted to the petitioner at the time of his said decease, (being the only debt which he owed to any one,) in the sum of $35,473 35-100.

The petitioner, therefore, prayed the court to make an order authorising him to make sale of the said above described real estate, in order to pay the said sum of money so as aforesaid due to him.

And the said petition was followed by two affidavits, as follows:

November, 1837—No. 72.

(Reg. alias Writ.)

CITY OF PHILADELPHIA, *ss.*

Isaac Phillips being duly sworn, says, that the facts set forth in the above petition are true, to the best of his knowledge and belief, and that the said real estate therein described is all the real estate of the said Robert Phillips, wherever situated, which has come to his knowledge.

IS. PHILLIPS.

Sworn before me, this 17th November, 1837.

JOHN BINNS, *Ald'n.*

(The following in Binns' writing.)

CITY OF PHILADELPHIA, *ss.*

Isaac Phillips being duly sworn before the subscriber, one of the Aldermen of the said city, this day, November 23, 1837, doth depose and say, that the above and foregoing statement is in all particulars just and correct.

IS. PHILLIPS.

Sworn and subscribed, November 23, 1837, before
JOHN BINNS, *Ald'n.*

Whereupon, the court, on due consideration, granted the prayer of the petitioner, and awarded an order of sale accordingly.

And afterwards, to wit, at an Orphan's Court held on the nineteenth day of January, A. D. 1838, the following return was made, to wit, viz:

Isaac Phillips, administrator of all and singular the goods and chattels, rights and credits, which were of Robert Phillips, deceased, do respectfully report, that by virtue of the annexed order of sale, he did, on Tuesday, the twenty-sixth day of December, one thousand eight hundred and thirty-seven, (1837,) after having given upwards of twenty days notice of the time and place of sale, by advertisements in the "National Gazette," "Poulson's American Daily Advertiser," and "The United States Gazette," three daily newspapers published in the city of Philadelphia, and by handbills posted up in the most public places in said city, expose the messuage or tenement and lot of ground in the said order of sale mentioned, to sale, by public vendue or outcry, at the Philadelphia Exchange, at the corner of Walnut and Third streets, in said city, at seven o'clock in the evening of said day, by the following description, viz:

All that certain lot or piece of ground situate on the westerly side of South Sixth street, and between High and Chesnut streets, in the city of Philadelphia, containing in breadth on the said Sixth street twenty-five feet, more or less; and of that breadth extending in length or depth westward to Decatur street one hundred and seventy-five feet, more or less, with the appurtenances.

On the premises is erected a substantial four story brick messuage, extending the entire depth of the lot from Sixth street to Decatur street, narrowing in the centre so as to leave a small side yard. And sold the same to David Samuel and J. Mora Moss, assignees of R. & I. Phillips, for the sum of twenty-two thousand five hundred dollars, they being the highest and best bidders, and that the highest and best price bidden for the same; which sale he prayed might be confirmed.

Whereupon, the court, on due consideration of the premises, granted the prayer of the petitioner, and confirmed said sale so as aforesaid made and approved, of John Moss, the elder, and E. L. Moss, as sureties, in the sum of thirty thousand dollars, which has been duly entered, on the 17th January, A. D. 1838.

CITY AND COUNTY OF PHILADELPHIA, *ss.*

I certify the foregoing to be a true copy of the proceedings had sur petition, in the matter of the estate of Robert Phillips, deceased, as appears of record in the office of the Orphan's Court for said city and county.

Witness my hand and seal of office, this 23d day of October, A. D. 1840.

[L. S.]

ROBERT F. CHRISTY,
Cl'k of Orphan's Court.

No. 17.

Deed from Isaac Phillips, administrator, &c., of R. Phillips, to David Samuel and Joseph Mora Moss, assignees, &c.; and deed endorsed—Joseph Moss and David Samuel, assignees of R. & I. Phillips, to William R. Hanson.

This indenture, made the thirtieth day of January, in the year of our Lord one thousand eight hundred and thirty-eight, between Isaac Phillips, of the city of Philadelphia, administrator of all and singular the goods and chattels, rights and credits, which were of Robert Phillips, late of the said city, merchant, deceased, of the one part, and David Samuel and Joseph Mora Moss, both of the said city, assignees of all the estate, debts and effects, which were of R. & I. Phillips, of the other part: whereas, at an Orphan's Court for the county of Philadelphia, held on the twentieth day of November, anno Domini, one thousand eight hundred and thirty-seven, before the Honorable Edward King, President, and John R. Jones, Associate Judges of the said court, the said Isaac Phillips, administrator as aforesaid, presented a petition setting forth, that the said Robert Phillips, in his lifetime, and on the day of his death, which took place on the day of December, eighteen hundred and thirty-three, was seised in fee of all that certain three story brick messuage or tenement; and also, all that certain two story brick messuage and lot or piece of ground situate on the westerly side of Sixth street, and between High and Chestnut streets, in the city of Philadelphia, containing in breadth on the said Sixth street, twenty-five feet, more or less, and of that breadth extending in length or depth, westward to Decatur street, one hundred and seventy-five feet, more or less, with the appurtenances. And that the said Robert Phillips, at the time of his death, possessed no personal pro-

perty, and that the said petitioner could not therefore exhibit a true and perfect inventory, and conscionable appraisement thereof; but that the whole of the real estate owned by the said Robert Phillips was, as is above stated and set forth, and that the said Robert Phillips was indebted to the petitioner at the time of his decease, (being the only debt which he owed to any one) in the sum of thirty-five thousand four hundred and seventy-three dollars and thirty-five cents; and praying the court to make an order for the sale of the aforesaid real estate, to pay the said sum of money due to the said petitioner.

Whereupon the said court, upon due consideration, granted an order of sale accordingly, to be made agreeably to the rules of the court and the acts of Assembly in such case made and provided. And whereas, at an Orphan's Court for the county of Philadelphia, held on the nineteenth day of January, eighteen hundred and thirty-eight, the said Isaac Phillips, administrator as aforesaid, did report to the honorable the judges of the said court, that by virtue of the above recited order of sale, he did, on Tuesday the twenty-sixth day of December, eighteen hundred and thirty-seven, after having given upwards of twenty days' notice of the time and place of sale, by advertisements in "the National Gazette," "Poulson's Daily Advertiser," and "United States Gazette," three daily newspapers published in the city of Philadelphia, and by handbills posted up in the most public places in the said city, expose the messuages or tenements, and lot of ground in the said order of sale mentioned, to sale, by public vendue or outcry, at the Philadelphia Exchange, at the corner of Walnut and Third streets, in the said city, at seven o'clock in the evening of said day, by the following description, viz: "all that certain lot or piece of ground situate on the westerly side of South Sixth street, and between High and Chestnut streets, in the city of Philadelphia, containing in breadth on the said Sixth street, twenty-five feet, more or less, and of that breadth extending in length or depth westward to Decatur street, one hundred seventy-five feet, more or less, with the appurtenances. On the premises is erected a substantial four story brick messuage, extending the entire depth of the lot from Sixth street to Decatur street, narrowing in the centre so as to leave a small side yard; and sold the same to the said David Samuel and Joseph Mora Moss, assignees of R. & I. Phillips, for the sum of twenty-two thousand five hundred dollars, they being the highest and best bidders, and that the highest and best price bidden for the same, which sale the said administrator prayed might be confirmed by the court; whereupon the said court, on motion of Edward D. Ingraham, Esquire, confirmed the sale so as aforesaid made, and approved of John Moss, the elder, and E. L. Moss, as sureties in the sum of thirty thousand dollars, who have entered into bond with the said administrator, and become bound accordingly, as in and by the records and proceedings of the said court, reference being had thereto, may more fully and

at large appear. Now this indenture witnesseth, that the said Isaac Phillips, administrator as aforesaid, in pursuance of the said recited order of court, and by force and virtue thereof, and of the laws of Pennsylvania, in such case made and provided, and for and in consideration of the aforesaid sum of twenty-two thousand five hundred dollars lawful money of the United States of America, unto him well and truly paid by the said David Samuel and Joseph Mora Moss, assignees as aforesaid, at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, released and confirmed, and by *the* presents doth grant, bargain, sell, release and confirm unto the said David Samuel and Joseph Mora Moss, assignee as aforesaid, their heirs and assigns, all that, the aforesaid four story brick messuage or tenement, and lot or piece of ground thereunto belonging, situate on the west side of Delaware Sixth street between High and Chestnut streets, in the said city of Philadelphia, containing in breadth on the said Sixth street, twenty-five feet, more or less, and of that breadth extending in length or depth, westward to Decatur street, one hundred and seventy-five feet, more or less, [which said described lot or piece of ground, with the buildings and improvements then thereon erected, Robert G. Herring and Louisa, his wife, by indenture, bearing date the ninth day of June, anno Domini one thousand eight hundred and thirty-two, recorded in the office for recording of deeds, &c., for the city and county of Philadelphia, in deed book, A, M, No. 24, page 159, &c., granted and conveyed unto the said Robert Phillips, his heirs and assigns forever, as in and by the said recited indenture, reference being had thereto, will more fully and at large appear,] together with all and singular other the buildings and improvements, ways, alleys, passages, waters, water courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging, or in any wise appertaining, and the reversions and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever at law, in equity or otherwise howsoever, which was of the said Robert Phillips, at and immediately before the time of his decease, of, in and to the same; to have and to hold the said messuage or tenement, and lot or piece of ground hereinbefore described, hereditaments and premises hereby granted or mentioned, and intended so to be, with the appurtenances, unto the said David Samuel and Joseph Mora Moss, assignees as aforesaid, their heirs and assigns, to and for the only proper use and behoof of the said David Samuel and Joseph Mora Moss, assignees as aforesaid, their heirs and assigns forever. And the said Isaac Phillips, administrator as aforesaid, for himself, his heirs, executors and administrators, doth by these presents covenant and agree with the said David Samuel and Joseph Mora Moss, assignees as aforesaid, their heirs and assigns, that he, the said Isaac Phillips hath not at any time heretofore done, or committed,

or wittingly or willingly suffered or permitted to be done, or committed, any act, matter orthing, whereby the hereby granted premises is, may or can in any way be evicted, charged or incumbered in title, estate, or otherwise howsoever.

In witness whereof, the said parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.

IS. PHILLIPS. [L. S.]

Sealed and delivered in the presence of us,
S. W. THACKARA,
JOHN S. YARDLEY.

Note.—An erasure on the fourth line from the top, and on the twenty-fourth line from the top, in both instances immediately after the words "R. & I. Phillips," having first been made.

Received, the day of the date of the above written indenture, of the above named David Samuel and Joseph Mora Moss, assignees as aforesaid, the sum of twenty-two thousand five hundred dollars, such as above said, being the full consideration money above mentioned.

IS. PHILLIPS.

Witnesses at signing,
S. W. THACKARA,
JOHN S. YARDLEY.

Before me, the subscriber, one of the Aldermen of the city of Philadelphia, personally appeared the above named Isaac Phillips, and acknowledged the above written indenture tobe his act and deed, and desired the same as such might be recorded according to law.

Witness my hand and seal, this thirty-first day of January, anno Domini one thousand eight hundred and thirty-eight (1838.)

WILLIAM MILNOR, *Ald.*

Upon the above recited deed *is* the following endorsements.

Ratified and confirmed, at an Orphan's Court holden Philadelphia, for the city and county of Philadelphia, on the nineteenth day of January, in the year of our Lord one thousand eight hundred and thirty-eight, and the as within made, ordered to be and remain firm and stable unto David Samuel and Joseph Mora Moss, assignees of R. & I. Phillips & Co., the grantees within named, their heirs and assigns, forever.

By the court. J. P. TRIMBLE, *Clk.*

Recorded in the office for recording deeds, &c., for the city and county of Philadelphia, in deed book S. H. F., No. 22, page 440.

Witness my hand and seal of office, this 8th day of March,
[L. S.] anno Domini, 1838.

For SAMUEL H. FISHER, *Rec.*
JOSHUA SHERING.

Endorsed upon the back of the above recited deed was the following Deed:

This indenture, made the tenth day of May, in the year of our Lord one thousand eight hundred and thirty-nine, between Joseph M. Moss and David Samuel, the grantees in the within written indenture named, and assignees of all the estate, debts, and effects which were of Isaac Phillips and Joseph L. Moss, of the city of Philadelphia, in the State of Pennsylvania, merchants, (the said Isaac Phillips and Joseph L. Moss being copartners in trade, under the firm of R. & I. Phillips,) of the one part, and William R. Hanson, of the said city, merchant, of the other part: Whereas, the above named Isaac Phillips, with Sarah, his wife, and Joseph L. Moss, with Julia, his wife, by a certain indenture of assignment, bearing date the twenty-second day of June, anno Domini one thousand eight hundred and thirty-seven, did (inter alia) grant and assign the within described and granted four story brick messuage or tenement, and lot or piece of ground thereunto belonging, situate on the west side of Delaware Sixth street, between High and Chesnut streets, in the said city of Philadelphia, containing in breadth, on the said Sixth street, twenty-five feet, more or less, and of that breadth extending in length or depth westward to Decatur street one hundred and seventy-five feet, more or less, with the appurtenances, unto the said Joseph M. Moss and David Samuel, and to the survivor of them, and to the heirs, executors, administrators, and assigns of the said survivor, in trust, to sell and dispose of the same, and apply the proceeds thereof to and for the benefit of the several creditors of them, the said R. and I. Phillips, in way and manner therein particularly set forth and expressed, as in and by the said recited indenture of assignment, recorded in deed book S. H. F., No. 14, page 705, &c., reference thereto being had, may more fully appear.

Now this indenture witnesseth, that the said Joseph M. Moss and David Samuel, assignees as aforesaid, for and in consideration of the sum of twenty thousand three hundred dollars, lawful silver money of the United States of America, unto them well and truly paid by the said William R. Hanson, at and before the sealing and delivery thereof, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released, and confirmed, and by these presents do grant, bargain, sell, release, and confirm unto the said William R. Hanson, his heirs and assigns, all that, the above

described four story brick messuage or tenement and lot or piece of ground thereunto belonging, so as aforesaid, situate on the west side of Delaware Sixth street, between High and Chestnut streets, in the said city of Philadelphia; containing in breadth, on the said Sixth street, twenty-five feet, more or less, and of that breadth extending in length or depth, westward, to Decatur street one hundred and seventy-five feet, more or less, as in and by the said within written indenture, (which is recorded in deed book S. H. F., No. 22, page 44, &c.,) is particularly set forth and specified, with the appurtenances; together with all and singular the buildings and improvements, ways, alleys, passages, waters, water-courses, rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereunto belonging, or in any wise appertaining; and the reversions and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, property, claim, and demand whatsoever, which was of them, or either of them, the said Isaac Phillips, and Sarah, his wife, and Joseph L. Moss, and Julia, his wife, or *is* of them, the said Joseph M. Moss and David Samuel, assignees as aforesaid, either at law or in equity of, in, and to the same, and every part and parcel thereof; to have and to hold the said four story brick messuage or tenement, and lot or piece of ground thereunto belonging, herein above described, hereditaments and premises, hereby granted or mentioned, and intended so to be, with the appurtenances, unto the said William R. Hanson, his heirs and assigns, to and for the only proper use and behoof of him, the said William R. Hanson, his heirs and assigns, forever. And the said Joseph M. Moss and David Samuel, for themselves, severally and respectively, their several and respective heirs, executors, and administrators, do, by these presents, covenant and agree with the said William R. Hanson, his heirs and assigns, that they, the said Joseph M. Moss and David Samuel, assignees as aforesaid, or either of them, have not done, or committed, or wittingly or willingly suffered or permitted to be done, or committed, any act, matter, or thing whatsoever, whereby the hereby granted premises, or any part thereof is, may, or can, in any way be impeached, charged, or incumbered, in title, estate, or otherwise howsoever.

In witness whereof, the said parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.

J. MORA MOSS, [L. S.]
DAVID SAMUEL. [L. S.]

Sealed and delivered in the presence of us,
JOSEPH BURDEN,
C. W. ROBINSON.

Received, the day of the date of the above endorsed indenture, of the above named William R. Hanson, the sum of twenty thou-

sand three hundred dollars, being the full consideration money above specified.

J. MORA MOSS,
DAVID SAMUEL.

Witnesses to the signing,
JOSEPH BURDEN,
C. W. ROBINSON.

Before me, the subscriber, one of the Aldermen of the city of Philadelphia, personally appeared the above named Joseph M. Moss and David Samuel, and acknowledged the above endorsed indenture to be their, and each of their act and deed; and desired the same, as such, might be recorded according to law.

Witness my hand and seal, this tenth day of May, in the [L. S.] year of our Lord one thousand eight hundred and thirty-nine, (1839.)

J. BURDEN, *Ald.*

Upon the back of the above deed was endorsed the following:

Endorsed deed, recorded in the office for recording of deeds, &c., for the city and county of Philadelphia, in deed book G. S., No. 5, page 162, &c.

Witness my hand and seal of office, May 23rd, 1839.

[SEAL OF OFFICE.]

G. SMITH, *Rec.*

No. 18.

Assignment.

This indenture, made this twenty-second day of June, in the year of our Lord one thousand eight hundred and thirty-seven, by and between Isaac Phillips, of the city of Philadelphia, merchant, and Sarah, his wife, and Joseph L. Moss, of the same city, merchant, and Julia, his wife; the said Isaac Phillips and Joseph L. Moss being copartners in trade, under the firm of R. & I. Phillips, of the first part, and Joseph M. Moss and David Samuel, of the same city, merchants, of the second part: Whereas, the said parties of the first part, on the day and date of these presents, are justly and truly indebted unto sundry persons, in divers sums of money, which, by reason of numerous and heavy losses and reverses, they are at present unable a pay and satisfy, but are desirous to apply and appropriate their estate and effects for and towards the payment and satisfaction of their said debts, so far as the same may avail:

Now, this indenture witnesseth: that the said parties of the first part, for and in consideration of the premises, and of one dollar, to them in hand, at and before the ensealing and delivery of these presents, by the said parties of the second part, well and truly

paid, the receipt whereof is hereby acknowledged; as also of divers other goods and valuable considerations, them thereunto moving, have granted, bargained, and sold, assigned, transferred, and set over, and by these presents do grant, bargain, and sell, assign, transfer, and set over, unto the said parties of the second part, and to the survivor of them, and to the heirs, executors, administrators, and assigns of the said survivor, all and singular the goods and chattels, merchandise, debts, sum and sums of money, due, owing or belonging to the said R. and I. Phillips, and all securities had, taken or obtained for the same; and also, all the right, title, and interest, property, claim, and demand of them, the said R. and I. Phillips, of, in, and to the same, and any and every part thereof; and the said parties of the *second* part, for and upon the same considerations, as hereinbefore set forth, have also granted, bargained, and sold, aliened, enfeoffed, released and confirmed, and by these presents do grant bargain, and sell, alien, enfeoff, release, and confirm unto the said parties of the *second* part, and the survivor of them, his heirs, executors, administrators, and assigns, all and singular, the following real estate, that is to say: all that lot or piece of ground situate on the north side of Chesnut street, at the distance of forty-two feet westward from the west side of Schuylkill Seventh street, in the city of Philadelphia, containing *a* front or breadth on said Chestnut street sixty-six feet, and extending in length or depth, northward, one hundred and fifty-eight feet to Linden street; being the same premises which George H. Thomson and Rebecca H., his wife, granted to the said Isaac Phillips, in fee, by indenture, bearing date on the ninth day of June, A. D. 1835, and duly recorded; and also all that certain three story brick messuage and lot on the westerly side of Sixth street, between High and Chestnut streets, in the said city; containing in front or breadth, on said Sixth street, twenty-five feet, more or less, and of that and seventy-three feet, more or less, with the appurtenances. And also all that certain messuage or store and lot of ground on the east side of Delaware Front street, between Walnut and Spruce streets, in the said city; containing in front or breadth on the said Front street, nineteen feet, and in length or depth, from the said Front street to Water street, about forty-one feet; being the same premises which John Sergeant, of the city of Philadelphia, Esquire, and *and* Margaretta, his wife, by indenture, bearing date on the second day of June, A. D. one thousand eight hundred and twenty-five, granted and conveyed unto the said Isaac Phillips, in fee; and all the right, title, and interest, property, claim, estate, and demand of them, the parties of the second part, or either of them, of, in, or to the said mentioned real estate, and with the appurtenances. To have and to hold, receive and take, all and singular, the said goods and chattels, merchandise, debts, sum and sums of money, securities for the same, rights, credits and estate, real and personal, hereby assigned or mentioned, or intended

so to be, with their and every of their appurtenances, unto the said parties of the second part; and to the survivor of them, his heirs, executors, administrators, and assigns, from henceforth forever, upon this special trust and confidence, nevertheless, and to no other; and to the intent and purpose, that they, the said parties of the second part, the survivor of them, his heirs, executors, administrators, and assigns, do, and shall, with all convenient speed, make sale and disposition of all and singular, the estate, real and personal, hereby assigned, for the most and best price they can get for the same, and use their best endeavours, by all lawful ways and means, to obtain, recover, and receive into their hands and possession, all and singular, the said debts, sum and sums of money due and owing to the said R. & I. Phillips. And that after deducting the reasonable expenses of creating and executing this trust, they, the said parties of the second part, the survivor of them, and his heirs, executors, administrators, and assigns, shall pay and distribute the procceds said assigned real and personal estate, in manner and form following, that is to say:

First, to pay and satisfy in full sundry small personal accounts, due from the said Isaac Phillips, not exceeding eight hundred dollars; and bills of the same character, due from the said Joseph L. Moss, not exceeding eight hundred dollars. Secondly, to pay and discharge in full to John Moss, Esquire, the full amount of his responsibilities, incurred by reason of his endorsements, on sterling bills of exchange, to take up drafts of Victor David, of New Orleans, and others, which said endorsements were so made by the said John Moss, subsequent to the suspension of payment by the said R. and I. Phillips, not exceeding three thousand pounds sterling, with the damages, interest and expenses on the said bills. Thirdly, to pay and satisfy to the said parties of the second part, the full amount of a certain judgment, recorded by the Planters' Bank of Georgia, against the said R. and I. Phillips, for the payment of which they, the said parties of the second part, have become sureties. Fourthly, to pay and satisfy in full to Thomas Dunlop, of the City of Philadelphia, the sum of five hundred dollars, due and owing to him from the said R. and I. Phillips for professional legal serving, antecedent to this assignment. Fifthly, to pay and satisfy in full to Giovanna Baptista Strappa and Ignacio Strappa, the sum of nine hundred and seventy dollars, being the amount collected for them by the said R. and I. Phillips, under and by virtue of a power of attorney, to recover a legacy due them, the said Strappas, in Italy; and after paying and discharging in full the foregoing sums to the several persons above named, in the order specified, then to pay and satisfy in full all and every the claim and claims of all the other creditors of them, the said R. and I. Phillips, if the balance of the said assigned estate shall prove sufficient so to do; and if it shall not prove so sufficient, then rateably and in proportion; who shall, if resident

in the United States, on or before the twenty-first day of August, in the present year, at twelve o'clock noon, and if resident in Europe, on or before the twentieth day of October, in the present year, at twelve o'clock noon, execute and deliver to the said R. and I. Phillips a full, valid and general release of their several and respective claims and demands, against them, the said R. and I. Phillips; and for the better and more easy getting in and receiving of all the debts, sum and sums of money, when due and owing to the said R. and I. Phillips, and for the general and effectual execution of this trust, the said parties of the first part have made, ordained, constituted and appointed, and by these presents do make, ordain, constitute and appoint the said parties of the second part, and the survivor of them, his executor and administrator, their true and lawful attorneys, irrevocable, in the name of the said parties of the first part, or in their or his own names or otherwise, but to and for the uses and purposes of this trust, to ask, demand, sue for, recover, have and receive of and from all and every person and persons, in any ways indebted or bound to the said parties of the first part, all and every sum and sums of money, by them or him respectively due and owing unto the said parties of the first part; and upon the receipt thereof, acquittances or other discharges to make and give; and in case of need, to settle, compromise and compound, for all or any of the said debts, as they or the survivor of them shall deem expedient for the interests of the estate; and also for the purposes aforesaid, an attorney or attornies, one, or those under him to appoint, and again at pleasure to revoke and re-appoint, and to do and perform all and every such further and other reasonable act or acts, thing or things, as shall be necessary or expedient for the purposes of this trust; hereby ratifying and confirming, and holding for firm and effectual all and whatsoever shall be legally done by their said attornies in the premises by virtue hereof.

In witness whereof, the said parties have hereunto interchangeably set their hands and seals, the day and year first above written.

J. PHILLIPS, [L. S.]
JOSEPH L. MOSS, [L. S.]
SARAH PHILLIPS, [L. S.]
JULIA MOSS. [L. S.]

Sealed and delivered in presence of *his*,

THOS. DUNLAP,
WILLIAM MILNOR.

We, the above mentioned Joseph M. Moss and David Samuel, hereby declare our acceptance of the trust hereby created.

Witness our hands and seals, this twenty-second day of June, A. D. 1837.

J. MORA MOSS,
DAVID SAMUEL.

Sealed and delivered in presence of *us*,
THOS. DUNLAP.

PHILADELPHIA CITY, *ss.*

Be it remembered, that on this twenty-second day of June, in the year of our Lord one thousand eight hundred and thirty-seven, before me, the subscriber, one of the aldermen in and for the City of Philadelphia, came the within named Isaac Phillips and Sarah, his wife, Joseph L. Moss and Julia, his wife, and severally acknowledged the within written indenture as and for their, and each of their act and deed, and desired that the same might be recorded as such according to law; they the said Sarah and Julia, being of full age, separate and apart from their said husbands by me examined, and the full contents thereof made known to them, voluntarily consenting thereto, and declaring that they executed the same of their own free will and accord, without any coercion or compulsion of their said husbands, or either of them.

Witness my hand and seal, the day and year above written.

WILLIAM MILNOR, *Ald.* [L. S.]

Recorded in the office for recording deeds, S. C., for the city and county of Philadelphia, in deed book S. H. F., No. 14, page 705, &c.

[L. S.] Witness my hand and seal of office, the 22d day of June, 1837.

SAMUEL FISHER,
Recorder.

No. 19.

Release.

To all men to whom these presents shall come—we, who have hereunto set our hands and seals, creditors of Isaac Phillips and Joseph L. Moss, of the City of Philadelphia, merchants, heretofore trading in copartnership, under the firm of R. & I. Phillips, send greeting:

Whereas, the said R. & I. Phillips, at the day of the making of these presents, are justly and truly indebted to us, their several creditors, in divers sums of money, which they are not able fully to pay and satisfy, but for the purpose of devoting their estate and

effects to the discharge of their said obligation, so far as the same may avail, the said R. & I. Phillips did, on the twenty-second day of June, anno Domini one thousand eight hundred and thirty-seven, make, execute and deliver, to Joseph Mora Moss and David Samuel, a general assignment of all their estate and effects in trust, according to their stipulations therein contained, for their several and respective debts, the terms and conditions of which said assignment, we, the undersigned, have agreed to accept and abide by, and to receive the dividend or dividends hereafter to be made by virtue thereof by the said assignees, in full satisfaction and extinguishment of our said several claims against them, the said R. and I. Phillips: now, therefore, know ye, that for and in consideration of the premises, each of us, the said creditors, who have hereunto set our hands and seals for him and herself, his and her heirs, executors, administrators and assigns, and copartners, doth by these presents remise and release and for ever discharge the said Isaac Phillips and Joseph L. Moss, copartners as aforesaid, their, and each of their respective heirs, executors and administrators, of and from all and all manner of actions, suits, reckonings, accounts, debts, dues and demands whatsoever, which against the said R. and I. Phillips and to the said Isaac Phillips and Joseph L. Moss, each and every of us, their and his creditor and creditors, now hath and have, or which each and every of our heirs, executors and administrators, respectively, hereafter may, can or ought to have, claim or demand for, upon or by reason of our several and respective debts to us severally due and owing, or for or by reason of any other matter, cause or thing, whatsoever, from the beginning of the world to the present day.

In witness whereof, we have hereunto severally set our hands and seals, on the days and dates, and for the amounts respectively due and owing to us, as are severally annexed to our respective signatures.

$459 65 July 28, 1837.

ISAAC PHILLIPS, [L. S.]
of N. Yk.

By HENRY M. PHILLIPS, [L. S.]
his Attorney.

Sealed and delivered in presence of us,
J. JENKINS.

$6,248 08.

LECOUX & CO. [L. S.]

J. JENKINS.

$6,410 15, less amount to be received from William Guisse.

A. H. DUNKLOP. [L. S.]

J. JENKINS.

Date ant. IGANZIO STRUPPER, [L. S.]
JOAN B. STRUPPER, [L. S.]
by his Attorney in fact,
IGANZIO STRUPPER. [L. S.]

Witness,
FRA. J. TROUBAT.

$500,
THO. DUNLAP. [L. S.]

Witness,
J. JENKINS.

£3000 sterling, provisional.
I. MOIS, [L. S.]

J. JENKINS.

Bill $4,456 79
£913 16 4
unpaid 2,456 79

$2,000 00 compl. damages.
THOMAS WARDLE. [L. S.]

J. JENKINS.

Damages 891 35

$2,891 35 due Thomas Wardle,
1,086 41

$3,977 76. £500
& 207, damages.
HENRY J. BOLLER. [L. S.]

J. JENKINS.

£3,400
2,070 dam. provisional.
HENRY PRATT McKEAN. [L. S.]

J. JENKINS.

$1,250,
less offset.
VORLIM BONK, [L. S.]
per M. E. JUAIL,
Agt.

J. JENKINS.

$1,293 51,
less offset.
M. E. JUAIL. [L. S.]

J. JENKINS.

$3,000.

M. E. JUAIL, [L. S.]
Ag't.

J. JENKINS,

$2,612 50.

THOS. HULMER. [L. S.]

J. JENKINS.

$8,035 50.

A. E. BANE. [L. S.]

J. JENKINS.

Fumes $105,000, and
damages.

GODFREY WEBING. [L. S.]

J. JENKINS.

Philadelphia, Aug. 21st, 1837, 12 o'clock.

J. JENKINS, [L. S.]
JOHN MOSS, Jr. [L. S.]

Sept. 21, 1837,
£150 sterling and damages.

JOSEPH JONAS. [L. S.]

J. JENKINS.

Oct. 12, 1837.
Am't $2,750.

KING ETTING. [L. S.]

J. JENKINS.

Oct. 19, 1837.
£979 12 3 sterl'g.

GOWAN & MART, [L. S.]
By their Attorney,
THOS. BIDDLE. [L. S.]

J. JENKINS.

Oct. 1°, 1837.
$12,473 30.

JOHN GUYER, [L. S.]
per M. E. JUAIL, [L. S.]
Att'y.

J. JENKINS.

Oct. 19, 1837.
£1,000, damages.
HENRY M. WALTER, [L. S.]
Agt. for JOHN WALTER. [L. S.]
J. JENKINS.

24th October, 1837,
at 12 o'clock noon, drew the red lines.
J. JENKINS. [L. S.]

No. 20.

Deed—Joseph M. Moss and David Samuel, assignees, &c., to William R. Hanson for lot of ground in Chesnut street.

This indenture, made the tenth day of May, in the year of our Lord one thousand eight hundred and thirty-nine, between Joseph M. Moss and David Samuel, of the city of Philadelphia, in the State of Pennsylvania, merchants, assignees of all the estate, debts and effects which were of Isaac Phillips and Joseph Moss, of the same place, merchants, (trading under the firm of R. & I. Phillips) of the one part, and William R. Hanson, of the said city of Philadelphia, merchant, of the other part; whereas, George H. Thomson, of the city of Philadelphia, gentleman, and Rebecca H., his wife, by indenture bearing date the ninth day of June, anno Domini one thousand eight hundred and thirty-five, did grant and convey unto the said Isaac Phillips, his heirs and assigns, all that certain lot or piece of ground situate on the north side of Chesnut street, at the distance of forty-two feet westward from the west side of Schuylkill Seventh street, in the said city of Philadelphia, containing in front or breadth on the said Chesnut street sixty-six feet, and extending in length or depth northward one hundred and fifty-eight feet, to a certain twenty feet wide street called Linden street. Bounded on the east and west by ground now or late of William B. Fling; on the north by the said Linden street; and on the south by the said Chesnut street—with the appurtenances; subject to the payment of a certain yearly rent charge or sum of two hundred and seventy-two dollars, lawful silver money, when, and as the same should thereafter grow due and payable unto Simon Gratz, his heirs and assigns, forever; and subject, also, to the payment of a certain mortgage debt or principal sum of three thousand five hundred dollars, lawful money, with interest, when, and as the same should thereafter become due and payable unto Thomas W. Morris, Esquire, as in and by the said recited indenture, recorded in the office for recording deeds, &c., for the city and county of Philadelphia, in deed book A. M., No. 63, page 425, &c., reference thereunto being had, may more fully and at large appear.

And whereas, James C. Fisher, of the city of Philadelphia,

gentleman, and Ann, his wife, in whom the said yearly rent charge was then legally vested, by indenture bearing date the twenty-second day of June, anno Domini one thousand eight hundred and thirty-five, did grant, release and extinguish the said yearly rent charge, or sum of two hundred and seventy-two dollars, with the appurtenances, unto the above named Isaac Phillips, his heirs and assigns, forever, as in and by the said last above recited indenture, recorded in the aforesaid office in deed book A. M., No. 65, page 538, &c., reference thereunto being had, may more fully and at large appear.

And whereas, the above mentioned mortgage debt or principal sum of three thousand five hundred dollars hath been fully paid off, discharged and satisfied of record; and whereas, the above named Isaac Phillips, with Sarah, his wife, and Joseph L. Moss, with Julia, his wife, by an indenture of assignment bearing date the twenty-second day of June, anno Domini one thousand eight hundred and thirty-seven, did grant and assign (inter alia) the above described lot or piece of ground, with the appurtenances, unto the said Joseph M. Moss and David Samuel, and to the survivor of them, and to the heirs, executors, administrators and assigns of the said survivor, in trust, to sell and dispose of the same, and apply the proceeds thereof to and for the benefit of the several creditors of them, the said R. & I. Phillips, in way and manner therein particularly set forth and expressed, as in and by the said recited indenture of assignment recorded in the aforesaid office in deed book S. H. F., No. 14, page 705, &c., reference thereunto being had, may more fully and at large appear.

Now, this indenture witnesseth, that the said Joseph M. Moss and David Samuel, assignees as aforesaid, for and in consideration of the sum of sixteen thousand dollars, lawful silver money of the United States of America, unto them well and truly paid by the said William R. Hanson, at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released and confirmed, and by these presents do grant, bargain, sell, release and confirm unto the said William R. Hanson, his heirs and assigns, all that, the aforesaid lot or piece of ground, situate on the north side of Chesnut street, at the distance of forty-two feet westward from the west side of Schuylkill Seventh street, in the said city of Philadelphia, containing in front or breadth on the said Chesnut street sixty-six feet; and extending in length or depth northward one hundred and fifty-eight feet, to a certain seventy feet wide street, called Linden street; bounded on the east and west by ground now or late of William B. Fling; on the north by the said Linden street, and on the south by the said Chesnut street, together with the free and common use and privilege of the said Linden street at all times hereafter, forever. And together also with all and singular, other the buildings and im-

provements, ways, streets, alleys, passages, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever, unto the hereby granted premises belonging, or in any wise appertaining; and the reversions and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, claim and demand whatsoever, which was of them, the said Isaac Phillips and Joseph L. Moss, and their respective wives, or is of them, the said Joseph M. Moss and David Samuel, assignees as aforesaid, either at law or in equity, of, in, and to the same and every part and parcel thereof: to have and to hold the said lot or piece of ground herein above described, hereditaments and premises hereby granted or mentioned, and intended so to be, with the appurtenances, unto the said William R. Hanson, his heirs and assigns, to and for the only proper use and behoof of him, the said William R. Hanson, his heirs and assigns, forever. And the said Joseph M. Moss and David Samuel for themselves, severally and respectively, their several and respective heirs, executors and administrators, do, by these presents, covenant and agree with the said William R. Hanson, his heirs and assigns, that they, the said Joseph M. Moss and David Samuel, assignees as aforesaid, or either of them, have not done or committed, or wittingly or willingly suffered to be done or committed, any act, matter or thing whatsoever, whereby the hereby granted premises, or any part thereof, is, may, or can, in any way be impeached, charged, or incumbered in title, estate, or otherwise howsoever.

In witness whereof, the said parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.

J. MORA MOSS, [L. S.]
DAVID SAMUEL. [L. S.]

Sealed and delivered in the presence of us,
JOSEPH BURDEN,
C. W. ROBINSON.

Received, the day of the date of the above written indenture, of the above named William R. Hanson, the sum of sixteen thousand dollars, being the full consideration money above specified.

J. MORA MOSS,
DAVID SAMUEL.

Witnesses to the signing,
JOSEPH BURDEN,
C. W. ROBINSON.

Before me, the subscriber, one of the aldermen of the city of Philadelphia, personally appeared the above named Joseph M. Moss and David Samuel, assignees as aforesaid, and acknowledged the above written indenture to be their and each of their act and deed, and desired the same, as such, might be recorded according to law.

Witness my hand and seal, this tenth day of May, in the year of our Lord one thousand eight hundred and thirty-nine, 1839.

J. BURDEN, *Ald'n.* [L. S.]

On the back of the above recited deed is the following endorsement:

Recorded in the office for recording of deeds, &c., for the city and county of Philadelphia, in deed book G. S., No. 5, page 164, &c.

Witness my hand and seal of office, May 23d, 1839.

G. SMITH, *Rec'r.*

No 21.

Be it remembered, that at a Court of Common Pleas, held at Philadelphia, for the county of Philadelphia, on the second day of October, A. D. one thousand eight hundred and thirty-seven, before the Honorable Edward King, President, and his associate judges of the said court, the following petition was presented, to wit:

To the Honorable the Judges of the Court of Common Pleas of Philadelphia County, the petition of Joseph L. Moss, of the City of Philadelphia, merchant, and partner in the firm of R. & I. Phillips, respectfully sheweth:

That your petitioner, by reason of sundry losses and misfortunes, is now unable to pay and satisfy his just debts, and therefore is compelled to apply to your honorable court for the relief provided for insolvent debtors, by the existing insolvent laws of this Commonwealth; that your petitioner resides in the county of Philadelphia, and has resided within the State of Pennsylvania six months immediately preceding this his application; and your petitioner has hereto annexed the following schedules:

1st. A statement of all the estate, effects, and property of the petitioner, whersoever situate, and of whatsoever kind.

2d. A statement of the debts due by him, containing the names of his creditors, the amount due to each, and the nature or character of the debt, so far as he can ascertain the same.

3d. A statement of the causes of his insolvency, and of the extent of his losses.

Your petitioner therefore applies to your honorable court, and prays that your honors will grant him such relief as is prescribed by the existing insolvent laws of this Commonwealth.

JOSEPH L. MOSS.

Joseph L. Moss, the above named petitioner, being duly sworn according to law, saith, that the facts set forth in the above petition, and in the annexed schedules or statements, are just and true.

JOSEPH L. MOSS.

Sworn and subscribed before me, this second day of October, A. D. 1837.

S. BADGER, *Ald'n.*

A Statement of all the estate, effects, and property of the petitioner, wheresoever situate, and whatsoever kind.

Your petitioner, Joseph L. Moss, has no estate, effects, or property. On the 22d day of March, A. D. 1837, your petitioner, and his co-partner, Isaac Phillips, composing the firm of R. & I. Phillips, executed an assignment of all the estate, effects, and property, joint and several, of the said firm, and of this petitioner, in the State of New York, in trust for the payment of debts—a true copy *a true copy* of which assignment is hereto annexed, marked A.; and on the 22d day of June, A. D. 1837, your petitioner, and his co-partner, Isaac Phillips, executed and delivered a general assignment of all their estate, effects and property, wheresoever situate, and of whatsoever kind, and of this petitioner, in trust for the payment of debts, copy of which assignment is hereto annexed, marked B. A list of the debts due to your petitioner, and to the said late firm, and of the property so assigned to his creditors, will be found annexed, marked C.; and on the 27th day of May, your petitioner sold and delivered to John Moss, all his household furniture, as appears in the schedule annexed, marked D.

Your petitioner prays, that the inventory of property conveyed in trust under his general assignment, filed and remaining of record in this court, may also be taken as part of this statement.

JOSEPH L. MOSS.

Know all men by these presents, that I, Joseph L. Moss, the above above named petitioner, have assigned, transferred and set over, and by these presents do assign, transfer, and set over unto G. Weber, and H. Pratt M'Kean, their heirs and assigns, all my estate, property, and effects whatsoever, to, for, and upon the uses, trusts, and purposes designated by the act, entitled "An act relating to insolvent debtors," passed the sixteenth day of June, A. D. one thousand eight hundred and thirty-six.

Witness my hand and seal, this 29th day of September, A. D. 1838.

JOSEPH L. MOSS. [L. S.]

Witness present,
GEO. NORTON.

The statement of the debts due by the petitioner, containing the names of his creditors, the amount due to each, and the nature and character of the debt, so far as he can ascertain the same, is hereto annexed in a certain exhibit or schedule, marked E. Although, from the fact of large amounts of his debts consisting of notes,

bills, acceptances, and negotiable paper, it is not possible for him to state, with accuracy, the names of the present holders of each, and every one of them.

JOSEPH L. MOSS.

A Statement of the causes of the petitioner's insolvency, and of the extent of his losses.

Your petitioner, and his co-partner, Isaac Phillips, when they entered into business, undertook to assume, liquidate, and continue the business of the late firm of R. & I. Phillips, (then composed of Isaac Phillips and Robert Phillips, since deceased,) his losses upon the stocks and other property of that firm, which was greatly extended, and upon merchandize much depreciated, cannot be ascertained with perfect accuracy, but your petitioner believes that they were not less than - - - - - - - - $250,000

After prosecuting the business of the present firm for some time, as your petitioner believes, to great profit, he and his co-partner were suddenly reduced to ruin and insolvency, by the bankruptcy of several other houses who were largely indebted to this petitioner's house, and among them the Messieurs Joseph, of New-York, by whom the petitioner's firm suffered a loss of cash—

Balance, - - - - - - - - -	$116,000
Paper of theirs, held by R. & I. Phillips, - - -	60,000
Drafts of theirs, accepted by same, - - - -	90,000
Bills of theirs in Europe endorsed by R. & I. Phillips,	250,000
And by the stoppage of several New-Orleans and Mobile houses, for whom your petitioner's firm had accepted drafts to the extent of - and who were unable to remit funds to meet the same.	240,413 40/100
By the bankruptcy of Wm. Sidney Warwick, of London, for whom petitioner's firm had paid - and drew on him for repayment—$80,000 of which drafts were dishonored. In consequence of the general disasters of the times, numerous domestic bills of exchange, drawn on New Orleans, Mobile, Charleston, and different parts of Kentucky, &c., to a very large amount, purchased by your petitioner's firm, were returned, under protest, and lost. The same causes operated to produce, and did cause, the dishonour of bills drawn at those places on Europe, and negotiated by your petitioner's firm, were to the extent of about - - - - - - - -	100,000
	100,000

By examination of the accounts of the late firm of R. & I. Phillips, existing for fifteen years previous to the formation of this your peti-

tioner's present firm, the expenses of living of the partners, so far as they can be ascertained, amount as follows:

Robert & Isaac Phillips.

Robert Phillips,	fifteen years, - - -	$75,000
Isaac Phillips,	do. - - - -	60,000

R. & I. Phillips.

Isaac Phillips,	in four years, - - -	22,530
Joseph L. Moss,	do. - - - -	18,633
		$176,163

JOSEPH L. MOSS.

A.

This indenture, made the twenty-second of March, in the year of our Lord one thousand eight hundred and thirty-seven, between Isaac Phillips and Joseph L. Moss, composing the firm of R. & I. Phillips of Philadelphia, in the State of Pennsylvania, of the first part, and Joseph M. Moss and David Samuel of the city of Philadelphia, merchants, of the second part: whereas, owing to divers losses and misfortunes in *the* mercantile business and operations, the said parties of the first part have been compelled to suspend their payments; now, therefore, this indenture witnesseth, that the said parties of the first part, for and in consideration of the premises, and of one dollar to them in hand paid, by the said parties of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have, and each of them hath granted, bargained and sold, assigned, transferred and set over, and by these presents do, and each of them doth grant, bargain and sell, assign, transfer and set over, unto the said parties of the second part, and to the survivor of them, and unto their heirs, executors, administrators and assigns of such survivor, all and singular, the joint and several property and estate of the said parties of the first part and of each of them, real and personal, situate, lying and being or, due owing or belonging to them or either of them, within the State of New York; and more particularly, three houses and lots, in Walker street, in the city of New York, and two bonds and mortgages on two other houses and lots in Walker street aforesaid; all the merchandise on board the ship Groton, now lying in the port of New York; and all merchandise, chattels or effects, in the hands of Messrs. Levy and Colgate, or any other person or persons, in the city of New York; all merchandise which may here-

after arrive in the said city of New York, belonging to the said parties of the first part or either of them; all debts, dues, demands, accounts and balances of accounts, due and owing, or hereafter to become due and owing to the said parties of the first part, or either of them, by Messrs. J. L. & S. Joseph & Co., of New York, or any other person or persons residing in the State of New York; and all and singular, the estate, right, title, interest, property, claim and demand whatsoever, both at law and in equity, of the said parties of the first part, and each any every of them, into and out of the said hereby assigned premises, or any and every part thereof. To have and to hold, receive and take the said premises hereby assigned, and every part thereof, unto the said parties of the second part, and the survivor of them, and the heirs, executors, administrators and assigns of such survivor; in trust, nevertheless, and to and for the several uses and purposes hereinafter mentioned, and declared of and concerning the same, (that is to say,) upon trust that the said parties of the second part, and the survivor of them, and the heirs, executors, administrators and assigns of such survivor, do and shall in such manner, and at such time or times, either at public or private sale, and for cash or upon credit, and by and under such terms and prices as they shall think reasonable and proper, absolutely sell, convey and dispose of, all and singular, the said estate, property and effects, hereby assigned, or so much thereof as can be sold or disposed of; and also do, and shall receive, collect and get in, all the residue of the said premises; and by and out of the monies which shall arise from such sale or sales, and which shall be collected, received and gotten in, as aforesaid, do pay and discharge or retain and reimburse themselves, for all such costs, charges, expenses and disbursements, as may have been or shall be rightfully paid or incurred by them, or for which they shall or may be liable in and about the execution of the trust herein contained, or in any wise relating thereto, together with a just and reasonable compensation for their services in this behalf, and in the execution of the trusts herein contained; and then upon the further trust, that the said parties of the second part, and the survivor of them, and the executors and administrators of such survivor, shall and do pay and satisfy to Messrs. Jonas Phillips and sons, of London, and to the individual members of that firm, and to each and every of them, all such sum and sums of money, debts, dues and demands as now are due and owing, or which are now contracted, though payable hereafter, by the said parties of the first part, jointly or severally, to the said Jonas Phillips and sons, or to all, any or either of the individual members of the said firm, and also lawful interest on the said several sums from the time they respectively are due, until paid; and then upon the further trust to divide and distribute all the residue of the said trust moneys which shall have been by them raised, received and gotton in, as aforesaid, to and among the other creditors of the aid parties of the first part, whether their debts be now due and wing, or are payable hereafter, pari passer, or in equal rateable

proportion, according to the amount of their respective just claims and demands; and the said parties of the first part, do hereby jointly and severally covenant and agree to and with the said parties of the second part, and the surviver of them, and the heirs, executors and administrators of such survivor, that they, the said parties of the first part, and each of them, their and each of their heirs, executors and administrators, shall and will do and execute any other and further lawful and reasonable act, matter or thing whatsoever, as well for confirming these presents, as for the further and better granting and assigning the premises in the manner and upon the trust aforesaid, when thereto required by the said parties of the second part or the survivor of them, or their heirs, executors or administrators of such survivor; and it is hereby expressly understood and agreed by and between the parties to these presents, that the said parties of the second part or the survivor of them, or the executor or administrator of such survivor, shall be at liberty to compound with any debtor or debtors of the said parties of the first part, whose debt is hereby assigned, as they or he may think fit; and also to refer to arbitration any debts, claim, demand, matter or thing hereby assigned; and the said parties of the first part, in consideration of the premises, do by these presents, jointly and severally constitute and appoint the said parties of the second part, and the survivor of them, to be their lawful attorney and attorneys irrevocable in the premises, in their name and stead, or otherwise as occasion may require, but to for the several uses, trusts, intent and purposes herein expressed, jointly and severally to ask, demand, sue for, and recover, collect and receive all debts, dues, demands, property, estate and effects of or belonging to them, and hereby assigned or meant and intended so to be, and to give proper acquittances and discharges therefor; also, in the name of the said parties of the first part or either of them or otherwise, as occasion may require, but to and for the uses, trusts and intents and purposes aforesaid, to institute, prosecute, defend and pursue to judgment and execution, any suit or suits, either at law or in equity, and in all courts and places whatsoever; and also to compound for, arbitrate and agree in, about any cause or causes, matters or things whatsoever that may arise under or in the execution of these presents, or any part or parts thereof; also to transact and perform all and every other further and lawful act or acts, deeds, matters and things in and about the premises as largely, amply and beneficially, to all intents and purposes whatsoever, as the said parties of the first part or either them, might or could do if these presents had not been executed with full power of substitution and revocation; they the said parties of the first part, hereby ratifying, confirming and allowing all and whatsoever the said parties of the second part, or either of them, shall or may jointly or severally, lawfully do or cause to be done in the premises under or by virtue of these presents; and the said parties of the second part, severally accept of the trusts hereby

reposed in them, and signify their acceptance thereof by executing these presents.

In witness whereof, the parties to these presents have hereunto set their respective hands and seals, the day and year herein first above written.

ISAAC PHILLIPS, [L. S.]
JOSEPH L. MOSS, [L. S.]
J. M. MOSS, [L. S.]
DAVID SAMUEL. [L. S.]

Sealed and delivered in the presence of,

(The word "second" on the first line of the first page being written on an erasure, and the words "or either of them" on the said first page interlined.)

THOMAS DUNLAP,
FRANCIS GRIFFIN.

CITY AND COUNTY OF NEW YORK:

On the twenty-third day of March, in the year of our Lord one thousand eight hundred and thirty-seven, before me personally came and appeared Francis Griffin, of the City of New York, to me known as one of the subscribing witnesses to the foregoing conveyance, who, being by me duly sworn, did depose and say, that he resides at No. eighteen, Vestry street, in the City of New York; that he knows Isaac Phillips, Joseph L. Moss, Joseph M. Moss and David Samuel, the persons described, and who have severally executed the said conveyance; and that he, the said Francis Griffin, was present and saw the said Isaac Phillips, Joseph L. Moss, Joseph M. Moss and David Samuel severally execute, and heard them severally acknowledge the said conveyance as their act and deed; and that thereupon he, together with Thomas Dunlap, became subscribing witnesses thereto; all of which being to me satisfactory evidence of the due execution of the said conveyance, let it be recorded.

N. W. STRONG, *Commissioner, &c.*

I, James Gulick, register for the city and county of New York, do hereby certify, that I have compared the preceding instrument of conveyance with the original of the same, recorded in said office of register on the twenty-third day of March, 1837, at 30 min. past 3 P. M. in Liber page of conveyances, and the same is a correct transcript therefrom, and of the whole of such original record.

W. COPP, *Dep. Reg.*

New York, March 21, 1837.

B.

This indenture, made the twenty-second day of June, in the year of our Lord one thousand eight hundred and thirty-seven, by

and between Isaac Phillips, of the city of Philadelphia, merchant, and Sarah, his wife, and Joseph L. Moss, of the same city, merchant, and Julia, his wife, the said Isaac Phillips and Joseph L. Moss being co-partners in trade, under the firm of R. and I. Phillips, of the first part, and Joseph M. Moss and David Samuel, of the same city, merchants, of the second part: whereas, the said parties of the first part, on the day of the date of these presents, are justly and truly indebted unto sundry persons, in divers sums of money, which, by reason of numerous and heavy losses and reverses, they are at present unable fully to pay and satisfy, but are desirous to apply and appropriate their estate and effects for and toward the payment and satisfaction of their said debts, so far as the same may avail; now this indenture witnesseth, that the said parties of the first part, for and in consideration of the premises, and of one dollar to them in hand, at and before the ensealing and delivery of these presents, by the said parties of the second part, well and truly paid, the receipt whereof is hereby acknowledged, as also of divers other good and valuable considerations, them thereunto moving, have granted, bargained and sold, assigned, transferred and set over, and by these presents do grant, bargain and sell, assign, transfer and set over unto the said parties of the second part, and to the survivor of them, and the heirs, executors, administrators and assigns of the said survivor, all and singular the goods and chattels, merchandise, debts, sum and sums of money, due, owing or belonging to the said R. and I. Phillips, and all securities had, taken or obtained for the same, and also all the right, title and interest, property, claim and demand, of them the said R. and I. Phillips, of, in and to the same, and any and every part thereof; and the said parties of the second part, for and upon the same considerations as herein before set forth, have also granted, bargained and sold, aliened, enfeoffed, released and confirmed unto the said parties of the second part, and to the survivor of them, his heirs, executors, administrators and assigns, all and singular the following real estate, that is to say: all that lot or piece of ground, situate on the north side of Chesnut street, at the distance of forty-two feet westward from the west side of Schuylkill Seventh street, in the city of Philadelphia, containing in front or breadth, on said Chesnut street, sixty-six feet, and extending, in length or depth, northward one hundred and fifty-eight feet to *Quinden* street; being the same premises which George H. Thomson, and Rebecca, his wife, granted to the said Isaac Phillips, in fee, by indenture bearing date on the ninth day of June, A. D. 1835, and duly recorded; and also all that certain three story brick messuage and lot on the westerly side of Sixth street, between High and Chesnut street, in the said city, containing, in front or breadth, on said Sixth street, twenty-five feet, more or less, and of that breadth extending, in length or depth, westward to Decatur street, one hundred and seventy-three feet, more or less, with the appurtenances; and also all that certain

messuage or store and lot of ground on the east side of Delaware Front street, between Walnut and Spruce streets, in the said city, containing, in front or breadth, on the said Front street, nineteen feet, and in length or depth, from the said Front street to Water street, about forty-one feet, being the same premises which John Sergeant, of the city of Philadelphia, Esquire, and *and* Margaretta, his wife, by indenture bearing date the second day of June, A. D. one thousand eight hundred and twenty-five, granted and conveyed unto the said Isaac Phillips, in fee; and all the right, title and interest, property, claim, estate and demand of them, the parties of the second part, or either of them, of, in or to the said mentioned real estate, with the appurtenances; to have and to hold, receive and take, all and singular, the said goods and chattels, merchandise, debts, sum and sums of money, securities for the same, rights, credits and estate, real and personal, hereby assigned or mentioned or intended so to be, with their and every of their appurtenances, unto the said parties of the second part, and to the survivor of them, his heirs, executors, administrators and assigns, from henceforth forever; upon this special trust and confidence, nevertheless, and to no other, and to the intent and purpose that they, the said parties of the second part, the survivor of them, his heirs, executors, administrators and assigns, do and shall, with all convenient speed, make sale and disposition of all and singular the estate, real and personal, hereby assigned, for the most and best price they can get for the same, and use their best endeavors, by all lawful ways and means, to obtain, recover and receive into their hands and possession, all and singular the said debts, sum and sums of money due and owing to the said R. and I. Phillips; and that after deducting the reasonable expenses of creating and executing this trust, they, the said parties of the second part, the survivor of them, and his heirs, executors, administrators and assigns, shall pay and distribute the proceeds of the said assigned real and personal estate, in manner and form following, that is to say: first, to pay and satisfy in full sundry small personal accounts due from the said Isaac Phillips, not exceeding eight hundred dollars; and bills of the same character due from the said Joseph L. Moss, not exceeding eight hundred dollars; secondly, to pay and discharge in full to John Moss, Esquire, the full amount of his responsibilities incurred by reason of his endorsement on sterling bills of exchange, to take up drafts of Victor David, of New Orleans, and others; which said endorsements were so made by the said John Moss, subsequent to the suspension of payment by the said R. and I. Phillips, not exceeding three thousand pounds sterling, with all damages, interest and expenses on the said bills; thirdly, to pay and satisfy to the said parties of the second part, the full amount of a certain judgment recovered by the Planters' Bank of Georgia, against the said R. and I. Phillips, for the payment which they, the said parties of the second part, have become sureties; fourthly,

to pay and satisfy in full to Thomas Dunlap, of the city of Philadelphia, the sum of five hundred dollars, due and owing to him from the said R. and I. Phillips, for professional legal service antecedent to this assignment; fifthly, to pay and satisfy in full to Giovanni Baptista Strupper and Ignacio Strupper, the sum of nine hundred and seventy dollars, being the amount collected for them by the said R. and I. Phillips, under and by virtue of a power of attorney to recover a legacy due to them, the said Struppers, in Italy; and after paying and discharging in full the foregoing sums to the several persons above named, in the order specified, then to pay and satisfy in full all and every the claim and claims of all the other creditors of them, the said R. and I. Phillips, if the balance of the said assigned estate shall prove sufficient so to do; and if it shall not prove so sufficient, then rateably and in proportion; who shall, if resident in the United States, on or before the twenty-first day of August, in the present year, at twelve o'clock, noon, and if resident in Europe, on or before the twentieth day of October, in the present year, at twelve o'clock, noon, execute and deliver to the said R. and I. Phillips a full, valid and general release of their several and respective claims and demands against them, the said R. and I. Phillips; and for the better and more easy getting in and receiving of all the debts, sum and sums of money now due and owing to the said R. and I. Phillips, and for the general, more effectual execution of the trust, the said parties of the first part have made, ordained, constituted and appointed, and by these presents do make, ordain, constitute and appoint the said parties of the second part, and the survivor of them, his executors and administrators, their true and lawful attornies, irrevocable, in the name of the said parties of the first part, or in their or his own names, or otherwise, but to and for the uses and purposes of this trust, to ask, demand, sue for, recover, have and receive of and from all and every person and persons in any ways indebted or bound to the said parties of the first part, all and every sum and sums of money, by them or him respectively due and owing unto the said parties of the first part; and upon the receipt thereof, or any part thereof, acquittances or other discharges to make and give, and, in case of need, to settle, compromise and compound for all or any of the said debts, as they or the survivor of them shall deem expedient for the interest of the estate; and also, for the purposes aforesaid, an attorney or attornies, one or more, under them to appoint, and again at pleasure to revoke and reappoint, and to do and perform all and every such further and other reasonable act or acts, thing or things, as shall be necessary or expedient for the purposes of this trust, hereby ratifying and conforming, and holding for firm and effective, all and whatsoever shall be legally done by their said attornies in the premises, by virtue hereof.

In witness whereof, the said parties have hereunto interchangeably set their hands and seals, the day and year first above written.

IS. PHILLIPS, [L. S.]
JOSEPH L. MOSS, [L. S.]
SARAH PHILLIPS, [L. S.]
JULIA MOSS. [L. S.]

(George, on the fourth page, being first written on an erasure.)
Sealed and delivered in the presence of

THOMAS DUNLAP,
WILLIAM MILNOR.

We, the above mentioned Joseph L. Moss and David Samuel, hereby declare our acceptance of the trust hereby created. Witness our hands and seals, this twenty-second day of June, A. D. 1837.

J. MORA MOSS, [L. S.]
DAVID SAMUEL. [L. S.]

Sealed and delivered in the presence of *us*,

THOMAS DUNLAP.

PHILADELPHIA CITY, *ss.*

Be it remembered, that on this twenty-second day of June, in the year of our Lord one thousand eight hundred and thirty-seven, before me the subscriber, one of the Aldermen in and for the city of Philadelphia, came the within named Isaac Phillips, and Sarah, his wife, Joseph L. Moss, and Julia, his wife, and severally acknowledged the within written indenture as and for their and each of their act and deed, and desired that the same might be recorded as such, according to law; they, the said Sarah and Julia being of full age, separate and apart from their said *their their said* husbands by me examined, and the full contents thereof made known to them, voluntarily consenting thereto, and declaring that they executed the same of their own free will and accord, without any coercion or compulsion of their said husbands, or either of them. Witness my hand and seal, the day and year above written.

WILLIAM MILNOR, *Ald'n.* [L. S.]

Recorded June 22, 1837.

PHILADELPHIA, *ss.*

I, Samuel H. Fisher, Recorder of Deeds, for the city and County of Philadelphia, do hereby certify the preceding assignment to be a true copy of a certain instrument of writing remaining to be recorded in my office, in deed book S, H, F, No. , page .

Witness my hand and seal of office, the 22d day of June, A. D. 1837.

SAMUEL H. FISHER, *Recorder.*

E.

Bell, De Yough & Co., book act.	$4,406 25
Baker & Moss, do.	145 50
Bills payable,	535,809 12
Brown, Joseph, bill of exchange,	1,942 22
Borie, J. J. do.	6,069 44
Boller, H. do.	3,062 20
Bullock, Davis & Co. do.	876 44
Boller, Wm. do.	2,418 89
Consignment, drugs,	684 26
do. oil,	1,194 15
Courselli, L. book act.	25 56
Denckla, A. H. bill of Exc'e,	4,855 56
Eustace, J. H. notes,	8,928 77
Exchange in Co., Herman's,	14,547 97
Elmes, &c. Co. Thomas, book act.	644 03
Hagedorn, Leopold, & Co. note,	4,183 51
Hulmer, Thos. do.	2,000 00
Henrion, S. do.	849 00
Hupfeldt, C. F. do.	364 29
Kentucky Bank, book act.	1,740 66
Levy, Lyon J. note	3,362 31
Lewis & Co., do.	4,855 56
Lizardi, & Co. F. de, book act.	63,191 00
Levy & Colgate, do.	128 32
Liddard, Wm. do.	252 19
Levy, J. C. do.	1,830 13
McKean, Henry Pratt, notes,	16,584 44
Mustin, J. note,	971 11
Moss, John, book act.	851 25
Morris Canal Co., do.	4,034 82
Natt, Thomas, note,	1,460 00
Phillips, Isaac, book act.	481 59
Phillips & Sons, Jonas do.	125,576 50
Pennsylvania Loan,	2,700 00
Quicksilver in Co.	3,323 30
Rawlins, S. D. book act.	1,091 52
Rothschild & Sons, N. M. book act.	25,595 31
Rothschild, frères do.	90,562, 44
Sharpless, Townsend, note,	971 11
Sartori, J. B. book act.	1,532 81
Suspense, Elmes & Co. do.	3,075 95
Tirante, H. J. do.	994 23
Thornspecken, note,	236 66
United States, do.	50 12
Wilson & Hallett, book act.	195 53
Walker, H. M. note,	4,900 00

Wardle, Thos. note,	$4,456 79
Wicht, Werner & Co. note,	8,438 89
Weber & Co. G. note,	20,095 70
Strupper, J. B. book act.	952 67
	$987,520 07
John Moss, judgment,	$24,000 00

JOSEPH L. MOSS.

No. 4.

C.

Bald Eagle Navigation Co.	$11,294 80
Barrell, & Co. Thomas,	132,545 06
Bills receivable, sundry promissory notes,	123,607 64
Biddle, & Co. Thomas,	424 42
Cook, William Wallace,	208 97
Cammel's hair,	147 65
Clark, Jacob	20 00
Cash in bank,	271 83
Desilver, Thomas & Co.	1,215 08
David, Victor	20,738 06
Eaton, Wm. Jarvis	101 74
Elmira rail road,	250 00
Fryer and Anderson,	30,000 00
Fernandez, H. J.	3,549 03
Flemmington & Co.,	27 71
Freeland, Aaron,	801 09
Gratz, J.	100 00
Goatly, D.	55 75
Grain, importation of	6,346 45
Goodman & Daniels,	26,671 28
Harper, & Co. C. A.	23,281 18
Herman & Co.	228 33
Do.	8,834 18
Herman and Sons, Samuel	3,241 52
Do.	20,801 52
Hopkins, Nicholas,	75 00
Israel, M. E.	141 41
Joseph, & Co. J. L. & S.	24,367 32
Do.	91,000 00
Levy, J. C.	8,561 60
Lousiana Co.	159 62
Lizardi, & Co. M.	357 04
Lutzenger & Co.	90 00
Linn & Ritchie,	427 86
Lazarus, H.	1,000 00

Loyd, Isaac,	$79,681 28
Plate glass, importation	411 67
Lot on Chestnut street,	20,000 00
House in Sixth street,	38,000 00
House in Front street,	5,000 00
Richards, G. W.	4,900 00
Saint, Daniel	1,000 00
Sherry wine,	373 33
Straw hats,	485 44
Steam Tow-boat Co.	500 00
Shipment, turpentine	507 86
Stern, Julius	100 00
Sartori, V. A.	5,088 28
Sayres, Converse, & Co.	19,119 21
Shipment, tobacco	1,109 36
Smith, William	265 00
Small, R.	119 25
Swain, J. L.	1,500 00
Smith & Brown,	3,045 50
Spanish wool,	4,713 63
Toby, & Co. Tho.	1,967 06
Welsh, J. R.	514 17
Wardle & Co.	2,469 67
Household furniture,	6,000 00
Goods in New York which passed under assignment, of March 22, 1837,	168,345 00
	$906,158 90

JOSEPH L. MOSS.

E.

Bills payable—Detailed.

Acceptance of sundry bills drawn by Thos. Barrett, & Co.			$177,500 00
do.	do.	Daniels & Goodman,	26,671 28
do.	do.	David Victor,	20,000 00
Our note, favor of Desilver, Thomas & Co., Desilver Thomas & Co.,			7,642 41
Our note favor of W. D. Lewis,		Girard Bank,	20,000 00
do.	favor	James Barron & Co.	1,930 00
do.	do.	J. K. Eyre,	414 06
do.	do.	Fryer and Anderson,	36,896 89
do.	do.	Hagedorn, Leopold & Co.	1,926 29
do.	do.	Isaac S. Loyd,	118,056 50
do.	do.	Linn & Ritchie,	1,253, 95
do.	do.	Lapsley, J. B.	773 98

Our note, favor of	J. M. Moss,	$1,500	00
do. do.	New Castle Manufacturing Co.	6,292	66
do. do.	G. R. Smith,	1,817	63
do. do.	Smith & Brown,	2,916	07
do. do.	J. L. Swain,	1,455	00
do. do.	S. F. Smith,	600	00
Our acceptance, sundry bills drawn by	John H. Eustace,	46,975	47
do. do.	Hermann & Sons,	2,402	45
do. do.	J. L. & S. Joseph & Co.	11,000	00
do. do.	J. C. Levy,	29,608	25
do. do.	Sayres, Converse & Co.	16,242	12
do. do.	V. A. Sartori,	1,934	10
		$535,809	12

C.

Bills receivable—Detailed.

J. L. & S. Joseph & Co. notes for	$57,671 43
Jackson, Riddle & Co. acceptance,	445 23
Samuel Hermann & Sons, dft.	2,030 45
Isaac M. Moss, notes,	1,500 00
J. D. & A. D. Brock, notes,	1,170 67
Chaperon & Nidelet do.	419 18
Richard Oakley do.	323 00
Fryer and Anderson's notes for	2,645 95
William Wood & Co.	298 30
J. and W. Penfold & Co.	172 12
Isaac S. Lloyd,	400 00
John P. Flagg,	1,867 35
Kelborn & Co.	1,264 50
S. G. Taylor & Co.	1,034 86
Crandell & Co.	595 04
R. P. Darnley,	200 00
L. J. Levy,	3,246 43
J. V. Matchett,	272 22
William Halsy & Co.	1,588 86
Delano & Whitney,	274 44
Haviland & Co.	310 14
Charles Freeman,	1,181 48
H. M. & B. B. Hart,	847 50
George Burrell,	1,863 80
Edward C. Biddle,	9,092 35
Vansyckle & Randell,	134 46
William Berger,	475 47
See and Remington,	2,588 58
Francis R. Rhoades & Co.	18,221 05
C. F. Raymond & Co.	1,000 00

Charles Squire,	$710 00
George Coghill & Sons,	184 62
Reaugh & Douglass,	2,818 41
W. & L. Fry,	395 06
J. Evans & Co.	2,507 76
J. J. & F. Treppe,	696 98
J. H. Cary & Co.	900 00
Charles Barney,	900 00
W. C. & F. Webb,	426 25
J. P. Flagg,	933 67
	$123,607 64

E.

Liabilities by Endorsements.

To the Girard Bank, Joseph & Co. notes discounted,		$78,000 00
Jackson & Riddles,		4,040 60
To the Philadelphia Bank, Jackson & Riddle discounted,		3,045 67
To the United States Bank, Samuel Comly discounted,		2,302 52
Joseph & Co. do.		11,000 00
Our bill on Sidney Warwick, London,	£9,498 8 7	
Endorsement on Joseph & Co., bills on N. M. Rothschild & Sons,	20,000	
To James Fassett & Co., endorsement on Joseph & Co. bill,	3,000	
Wecht, Werner & Co. do.	1,600	
To H. M. Walker & Co. endorsement	3,002 5 2	
Hobson, Sons & Co. do.	2,400	
F. de Lizardi & Co., Barrell's bills end'd	6,597 14 10	
do. do. J. H. Eustace	7,886 12 1	
	£53,985 0 8	
To John H. Eustace for Joseph & Co., notes discounted,		$4,465 00
John Moss, for his endorsement of bills on England, forwarded by Victor David,	£3,000	
Bills on England, for which no value is received and their fate unknown—Favor, H. P. McKean,	18,000	
Nicholas Hopkins,	1,000	
Cana F. King,	1,000	
J. Gratz,	1,500	
John R. Welsh,	100	
Wm. Wallace Cook,	1,475	
	£23,075	

D.

Know all men by these presents, that I, Joseph L. Moss, of the city of Philadelphia, being at this time indebted to John Moss, also of the same city, in the sum of twenty-four thousand dollars, as will appear by the record of the District Court for the city and County of Philadelphia, (D. S. B., March, 1837, No. 51, March 27, 1837,) for and in consideration of the sum of three thousand nine hundred and fifty-six dollars, to me in hand paid by the said John, and by me paid to the said John on account of the said judgment and debt of twenty-four thousand dollars—have granted, bargained, sold, assigned and transferred, and by these presents I do grant, bargain, sell, assign and transfer unto John Moss, his executors, administrators or assigns, all and singular the herein named goods, chattels, articles and implements of household, valued at the sums respectively attached, and in all amounting to the above named sum of three thousand nine hundred and fifty dollars, to wit: two curtains and ornaments, three hundred dollars; two window blinds, twenty dollars; two velvet sofas, eighty dollars; one piano stool and piano, two hundred and fifty dollars; one centre table, seventy-five dollars; one pier table, fifty dollars; one work box, thirty dollars; one marble cupid, forty dollars; one looking-glass, two hundred and fifty dollars; one pier glass, seventy-five dollars; shovel and tongs, five dollars; nine velvet chairs, forty-five dollars; two ottomans, fifteen dollars; a pair of candlebrass, ninety dollars; mantel ornaments, ten dollars; one velvet chair, thirty dollars; carpet and rug, one hundred and twenty-five dollars. All the said articles being in the front room of first story of house No. 370, Walnut street, in said city. Also, curtain, forty dollars; blind, eight dollars; two sofas, thirty dollars; one sideboard, fifty dollars; two looking-glasses, two hundred and sixty dollars; one centre table, thirty dollars; one marble statue, fifty dollars; nine chairs, forty dollars; two astral lamps, twenty-five dollars; two candlebrass, forty dollars; ornaments, ten dollars; shovel and tongs, seven dollars; footstool, spittoon, &c., five dollars; carpet and rug, one hundred and twenty-five dollars. The said articles being in the back room of first story of said house. Also, two bureaus, sixty dollars; one dressing table, twenty-five dollars; one wardrobe, eighty dollars; six chairs, fifteen dollars; one sofa, ten dollars; one wash-stand and utensil, fifteen dollars; one pot closet, five dollars; carpet and rug, twenty dollars; bed and window curtains, ten dollars; bedstead, crib and bedding, forty dollars; looking-glass, twenty dollars; lamp ten dollars. The said articles being in the front room of second story in the said house. Also, one bureau, fifteen dollars; one dressing table, twenty-five dollars; one wash stand and utensil, seven dollars; one lamp-stand, three dollars; one wardrobe, sixty dollars; one bed, crib and bedding, forty dollars; one trundle-bed and bedding, ten dollars; curtains,

five dollars; four chairs, five dollars; two pair of candlesticks, six dollars; carpeting, fifteen dollars; one fender, three dollars—all being in the back room of second story of said houses. Also one bureau, twelve dollars; nine chairs, eighteen dollars; one easy chair, five dollars; one card table, ten dollars; carpeting, ten dollars; mantel ornaments, two dollars—all being in the first room of the back building of said house. Also, two chairs, six dollars; one ice box, ten dollars; the contents of closet, china, glass, &c., two hundred dollars—all being in the second room of the said back building. Also four chairs, six dollars; one table, one dollar; clothes-horse, two dollars; matting for rooms down stairs, seventy-five dollars—all being in the third room of the said back building. Also one looking-glass, three dollars; one bureau, eight dollars; one bed and bedding, ten dollars; utensils, two dollars; four chairs, seven dollars; curtains, two dollars; wash-stand, &c., three dollars—all being in the front room of the 3d story of said house. Also bed and bedding, ten dollars; table, five dollars; one looking-glass, three dollars; one stove, seven dollars; one wash-stand, three dollars; six chairs, five dollars; curtains, two dollars; two pictures, three dollars—all being in the back room of said third story. Also one book-case and books, seventy-five dollars; one looking-glass and ornaments, twenty-five dollars; one dining-table, twenty dollars; one card table, ten dollars; contents of closet, knives, forks, castors, glass, &c., seventy-five dollars; nine chairs, twelve dollars; spittoons, shovel, &c., five dollars; plate warmer, five dollars; coal scuttle, three dollars; sofa, ten dollars; window blinds, five dollars—all being in the dining-room, down stairs, of said house. Also plates, pots, dishes, dish covers, and other kitchen utensils and furniture, one hundred dollars; being in the kitchen of said house. Also barrels, bottles, &c., contents of cellar of said house, fifty dollars. Also oil cloth, forty dollars; hat-stand, fifteen dollars; lamps, &c., ten dollars; mats, three dollars; fire screen, five dollars; in the entry down stairs. Also four chairs, five dollars; lamp, four dollars; oil cloth, ten dollars; in entry of second story. Also stair carpeting, cover and rods, one hundred dollars; up stairs. Also all the silver and silver plate in the said house, No. 370 Walnut street, valued at or worth about six hundred dollars, making altogether the sum of thirty-nine hundred and fifty-six dollars. To have and to hold the above described premises, goods and chattels, unto him, the said John Moss, his executors, administrators and assigns, to and for his and their single and separate use and behoof, without any reservation to me, the said Joseph L. Moss, or any one claiming, or to claim, by, from, or under me.

In witness hereof, I have hereunto set my hand and seal, the twenty-seventh day of May, in the year of our Lord one thousand eight hundred and thirty-seven.

JOSEPH L. MOSS, [L. S.]

Sealed and delivered in the presence of
HENRY M. PHILLIPS.

E.

In the following cases, judgments have been obtained. These are included in the list of creditors:

Charles McAlester,	*vs.*	R. & I. Phillips.
Houston & Co.,	*vs.*	same.
Gustavus Loewig,	*vs.*	same.
V. Ehrman,	*vs.*	id.
John Welsh,	*vs.*	same.
DeLizardi & Co.,	*vs.*	id.
Thos. Natt,	*vs.*	id.
Desilver, Thomas & Co.,	*vs.*	id.
H. M. Walker,	*vs.*	id.
Planters' and Mechanics' Bank of S. C.,	*vs.*	id.
Catherwood,	*vs.*	id.
Rothschild,	*vs.*	id.

These judgments are all in the District Court for the city and County of Philadelphia.

JOSEPH L. MOSS.

Whereupon it was ordered by the said court, that he give notice to his respective creditors to appear at the court house in the said city, on the eighteenth day of October then next, to show cause, if any they have, why he should not receive the benefit of the provisions of the said acts of Assembly. And he having appeared before the said court on the eighteenth day of October, pursuant to the order of the said court, and afterwards on the nineteenth day of October (his application having been continued to that day,) and it appearing that he had given public notice in the Pennsylvania Inquirer, and Philadelphia Gazette, two daily newspapers published in the city of Philadelphia, to the several creditors of the said petitioner mentioned, and marked in the list exhibited with the said petition, notifying the said creditors of the time and place appointed by the said court for proceeding upon the said petition; and the court having examined into the matter of the said petition, and no cause being shown why the prayer of the petitioner should not be granted, he took the oath prescribed by law for the relief of insolvent debtors; and he having made an assignment of all his estate, real and personal, in trust, for the use and benefit of all his creditors, to he, the said Joseph L. Moss, was discharged, and it was thereupon ordered by the said court, that the said petitioner shall not at any time thereafter be liable to imprisonment, by reason of any judgment or decree obtained for payment of money only, or for any debt, damage, costs, sum or sums of money contracted, accrued, occasioned, owing or becoming due before the time of such assignment.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, at Philadelphia, this twelfth day of October, in the year of our Lord one thousand eight hundred and forty. [L. S.]

S. HART, *Prothonotary.*

In the Court of Common Pleas of Philadelphia County.

In the matter of Joseph L. Moss and Isaac Phillips, insolvent debtors.

July 20, 1838. The court direct the trustees, Godfrey Weber and H. Pratt McKean, to enter bond with sureties in the sum of twenty thousand dollars, to be approved by the court; same day the court approve A. E. Borie and Henry J. Boller as such sureties.

Sept. 29, 1838. Bond entered accordingly, trustees' bond book, No. 1, page 251; which bond is in the following words, to wit:

Know all men by these presents, that we, Godfrey Weber, H. Pratt McKean, A. E. Borie and Henry J. Boller, are held and firmly bound unto the Commonwealth of Pennsylvania in the sum of twenty thousand dollars, lawful money of the United States, to be paid to the said Commonwealth, its certain attorney or assigns; to which payment, well and truly to be made, we do bind and oblige ourselves, our heirs, executors or administrators and assigns, jointly and severally, firmly by these presents.

Sealed with our seals, dated the twenty-ninth day of September, A. D. eighteen hundred and thirty-eight.

Whereas, the above bounden Godfrey Weber and H. Pratt McKean have been appointed by the Court of Common Pleas of Philadelphia County, trustees of all the estate, real and personal, of Joseph L. Moss and Isaac Phillips, insolvent debtors:

Now, the condition of this obligation is such, that if the above bounden Godfrey Weber and H. Pratt McKean, trustees aforesaid, shall well and faithfully execute the said trust, in all legal respects, then this instrument to be void, otherwise to remain in full force.

GODFREY WEBER, [L. S.]
H. PRATT McKEAN, [L. S.]
A. E. BORIE, [L. S.]
(Word "an" stricken out.) HENRY J. BOLLER. [L. S.]

Sealed and delivered in the presence of
ROBT. MORRIS.

Sep. 29, 1838.
The above date inserted before the acknowledgment of the bond.
ROBT. MORRIS.

October 20, 1838. Petition of N. Berthond, agent in the United States, of the Messrs. F. de Lizardi & Co., of London, read and filed; which petition is in the following words, to wit:

To the Honourable the Judges of the Court of Common Pleas for the city and County of Philadelphia.

The petition of Mr. N. Berthond, agent in the United States, of the Mess'rs F. de Lizardi & Co., of London, respectfully represents: that on the 22d day of June, 1837, Isaac Phillips and Joseph L. Moss, trading as R. & I. Phillips, executed a deed of assignment of all their property to David Samuel and Mora Moss, in trust for the benefit of such of their creditors as should execute to them a release of all their claims. That subsequently thereto, the said R. & I. Phillips were discharged under the insolvent laws of this Commonwealth, and Godfrey Weber and H. Pratt McKean, who had previously executed the stipulated release, in the above mentioned deed, were appointed trustees; that the said trustees have therefore a direct interest in establishing the validity of the said deed of assignment, against the Mess'rs Lizardi, and other non-releasing creditors, who are about commencing proceedings to set it aside, as fraudulent and void, to which proceedings the said trustees must be made parties; that the appraised value of the estate of the said R. & I. Phillips, is $139,373 69 cts., while the bond given by the trustees is only $20,000, a sum so disproportionate to the assets that must come into their hands, as to be clearly an inadequate security; your petitioner therefore prays, that your Honourable Court will discharge the said trustees from their said appointment, and appoint others in their stead.

And your petitioner will ever pray, &c.

This 17th day of October, 1837, personally appeared before me, one of the aldermen of the city of Philadelphia, Mr. Berthond, the petitioner above named, who, being duly sworn according to law, declares, that the facts set forth in the above petition are true, to the best of his knowledge and belief.

N. BERTHOND.

Sworn and subscribed before me, this 17th day of Oct'r, 1838.

WILLIAM MILNOR, *Alderman.*

Whereupon, on motion of Mr. Waln, citation awarded to Godfrey Weber and H. Pratt McKean, trustees of the estate of the said assignees, to show cause why they should not be discharged from their said office of trustees, and others appointed in their stead—ret'ble Oct. 27, '38; which citation is in the following words, to wit:

PHILADELPHIA COUNTY, *ss:*

The Commonwealth of Pennsylvania, to Godfrey Weber and H. Pratt McKean, trustees of Joseph L. Moss and Isaac Phillips, insolvent debtors, greeting:

At the instance of Mr. N. Berthond, agent in the United States,

of the Mess'rs F. de Lizardi & Co., of London, creditors of the said Joseph L. Moss and Isaac Phillips:

You and each of you, are hereby cited to be and appear before our judges at Philadelphia, at our Court of Common Pleas for the city and County of Philadelphia, to be held the twenty-seventh day of October, 1838, at 10 o'clock in the forenoon of that day, then and there to answer the complaint aforesaid, and to show cause, if any you or either of you have, why you should not be dismissed from the said trust, and another or others appointed in your stead; and generally to do and abide all orders of the said court in the premises. And herein fail not at your peril.

Witness the Honourable Edward King, president of our said court at Philadelphia, the twenty-third day of October, in the year of our Lord one thousand eight hundred and thirty-eight.

[L. S.]

ROB'T MORRIS,
Prothonotary.

Nov. 10, '38, rule of Oct. 20.—Discharged.

PHILADELPHIA COUNTY, *ss:*

I, Samuel Hart, Esquire, Prothonotary of the Court of Common Pleas of said county, do certify that the aforegoing is a true copy of the entire proceedings had in the aforegoing case.

In testimony whereof, I have hereunto set my hand, and affixed the seal of the said court at Philadelphia, this twelfth day of October, in the year of our Lord, one thousand eight hundred and forty.

[L. S.]

S. HART, *Prothonotary.*

Oct. 20, 1838.

Petition of N. Berthond, agent in the United States, of Messrs. De Lizardi & Co., of London, read and filed.

(Ut Supra.)

On motion of Mr. Waln, a citation is awarded to Godfrey Weber and H. Pratt McKean, trustees of the estate of Joseph L. Moss and of Isaac Phillips, to show cause why they should not be discharged from their said office of trustees, and others appointed in their stead—ret'ble Oct. 27, 1838.

Nov. 10th 1838, rule of 20th October, ulto.—Discharged.

(Vide assignees and trustees' docket, B. folio 96.)

No. 22—22 *A.*

Be it remembered, that at a Court of CommonP leas, held at Philadelphia for the County of Philadelphia, on the second day of October, A. D. one thousand eight hundred and thirty-seven, before the Honourable Edward King, president, and his associates, judges of the said court, the following petition was presented, to wit:

To the honorable the Judges of the Court of Common Pleas of Philadelphia county.

The petition of Isaac Phillips, late of the city, now of the county of Philadelphia, merchant, respectfully showeth:

That your petitioner, by reason of sundry losses and misfortunes, is now unable to pay and satisfy his just debts, and therefore is compelled to apply to your honorable court for the relief provided for insolvent debtors, by the existing insolvent laws of this commonwealth; that your petitioner resides in the county of Philadelphia, and has resided within the State of Pennsylvania six months immediately preceding this, his application; and your petitioner has hereto annexed the following schedules.

1st. A statement of all the estate, effects, and property of the petitioner, wheresoever situate, and of whatsoever kind.

2d. A statement of the debts due by him, containing the names of his creditors, the amount due to each, and the nature or character of the debt, so far as he can ascertain the same.

3d. A statement of the causes of his insolvency, and of the extent of his losses.

Your petitioner, therefore, applies to your honorable court, and prays that your honors will grant him such relief as is prescribed by the existing insolvent laws of this commonwealth.

IS. PHILLIPS.

Isaac Phillips, the above named petitioner, being duly sworn according to law, saith, that the facts set forth in the above petition, and in the annexed schedules or statements, are just and true.

IS. PHILLIPS.

Sworn and subscribed before me, this 30th day of September, A. D. 1837.

WILLIAM MILNOR, *Ald'n.*

Sworn to before me, this 2nd Oct., 1837.

S. BADGER, *Ald'n.*

A statement of all the estate, effects, and property of the petitioner, wheresoever situate, and of whatsoever kind.

Your petitioner, Isaac Phillips, has no estate, effects or property. On the twenty-second day of March, A. D. 1837, your petitioner and his co-partner, Joseph L. Moss, composing the late firm of R. & I. Phillips, executed an assignment of all the estate, effects and property, joint and several, of the said firm and of this petitioner, in the State of New York, in trust for payment of debts; a true copy of which assignment is hereto annexed, marked (A.)

And on the twenty-second day of June, A. D. 1837, your petitioner and his co-partner, Joseph L. Moss, executed and delivered a general assignment of all their estate, effects and property, wheresoever situate, and of whatsoever kind, and of this petitioner, and in trust for the payment of debts, copy of which assignment is hereto annexed, marked (B.)

A list of the debts due to your petitioner, and the said late firm, and of the property so assigned to his creditors, will be found annexed, marked (C.)

And on the third day of June, A. D. 1837, your petitioner sold and delivered to Joseph Moore Moss, a portion of his goods and furniture, specified and stated in the schedule hereunto appended, marked (D;) and all the residue of his furniture was assigned to his creditors, as above.

Your petitioner also prays, that the inventory of the assigned property filed and remaining of record in this court, may be taken as part of this statement.

IS. PHILLIPS.

Know all men by these presents, that I, Isaac Phillips, the above named petitioner, have assigned, transferred, and set over, and by these presents do assign, transfer, and set over unto G. Weber and H. Pratt McKean, their heirs and assigns, all my estate, property and effects whatsoever, to, for and upon the uses, trusts, and purposes designated by the act, entitled "an Act relating to insolvent debtors," passed the sixteenth day of June, A. D. one thousand eight hundred and thirty-six.

Witness my hand and seal, this 29th day of September, A. D. 1838.

IS. PHILLIPS. [L. S.]

Witness present,
GEO. NORTON.

The statement of the debts due by the petitioner, containing the names of his creditors, the amount due to each, and the nature and character of the debt, so far as he can ascertain the same, is hereto annexed in a certain exhibit or schedule, marked E;

altho' from the fact of large amounts of his debts, consisting of notes, bills, and acceptances and negotiable paper, it is not possible for him to state with accuracy the names of the present holders of each and every one of them.

IS. PHILLIPS.

A statement of the causes of the petitioner's insolvency, and of the ex ent of his losses.

Your petitioner and his co-partner, Joseph L. Moss, when they entered into business, undertook to assume, liquidate and continue the business of the late firm of R. & I. Phillips, (then composed of this petitioner and his brother, Robert Phillips, since deceased;) his losses upon the stocks and other property of that firm, which was greatly extended, and merchandize much depreciated, cannot be ascertained with accuracy; but your petitioner believes that they were not less than - - - - - $250,000

After prosecuting the business of the present firm of R. & I. Phillips for some time, as your petitioner believed to great profit, he and his co-partner were suddenly reduced to ruin and insolvency, by the bankruptcy of several other houses, who were largely indebted to this petitioner's house, and among them the Messieurs Joseph, of New York, by whom the petitioner's firm suffered a loss of cash balance, 116,000

Paper of theirs held by R. & Phillips - - 60,000

Drafts of theirs, accepted by R. &. I. Phillips - 90,000

Bills of theirs on Europe, endorsed by R. & I. Phillips, - - - - - - - 250,000

And by the stoppage of several New Orleans and Mobile houses, for whom your petitioner's firm had accepted drafts to the extent of - 240,413 $\frac{40}{100}$

And who were unable to remit to your petitioner's firm funds to meet the same.

By the bankruptcy of William Sidney Warwick, of London, for whom petitioner's firm had paid - 100,000

And drew on him for repayment; $80,000 of which drafts were dishonored. In consequence of the general disasters of the times, numerous domestic bills of exchange drawn on New Orleans, Mobile, Charleston, different parts of Kentucky, &c., to a very large amount, purchased by your petitioner's firm, were returned under protest, and lost.

The same causes operated to produce, and did cause the dishonor of bills drawn at those places on Europe, and negotiated by your petitioner's firm, to the extent of about - - - - 100,000

By examination of the accounts of the late firm of R.

& I. Phillips, existing for fifteen years previous to the formation of this, your petitioner's firm, the expenses of living of the partners, so far as they can be ascertained, amount as follows:

Robert and Isaac Phillips.

Robert Phillips, in fifteen years, - - -	$75,000
Isaac Phillips, do. do. - - -	60,000

R. & I. Phillips.

Isaac Phillips, in four years, - - -	$22,530
Joseph L. Moss, do. do. - - -	18,633
	$176,163

ISAAC PHILLIPS.

A.

This indenture, made the twenty-second day of March, in the year of our Lord one thousand eight hundred and thirty-seven, between Isaac Phillips and Joseph L. Moss, composing the firm of R. & I. Phillips, of Philadelphia, in the State of Pennsylvania, of the first part, and Joseph M. Moss and David Samuel, of the city of Philadelphia, merchants, of the second part:

Whereas, owing to divers losses and misfortunes in the mercantile business and operations, the said parties of the first part have been compelled to suspend their payments: Now, therefore, this indenture witnesseth, that the said parties of the first part, for and in consideration of the premises, and of one dollar, to them in hand paid, by the said parties of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have, and each of them hath granted, bargained and sold, assigned, transferred, and set over, and by these presents do, and each of them doth grant, bargain, and sell, assign, transfer, and set over unto the said parties of the second part, and to the survivor of them, and unto the heirs, executors, administrators and assigns of such survivor, all and singular the joint and several property and estate of the said parties of the first part, and each of them, real and personal, situate, lying, and being, or due, owing or belonging to them, or either of them, within the State of New York; and more particularly three houses and lots in Walker street, in the city of New York, and two bonds and mortgages on two other houses and lots in Walker street aforesaid. All the merchandize on board the ship Groton, now lying in the port of New York, and all merchandize, chattels, or effects in the hands of Messrs. Levy & Colgate, or any other persons, in the city of New York. All merchandize which may hereafter arrive in the said city of New York belonging to the said parties of the first part, or

either of them. All debts, dues, and demands, accounts and balances of accounts due and owing, or hereafter to become due and owing, to the said parties of the first part, or either of them, by Messrs. J. L. & V. Joseph, & Co., of New York, or any other person or persons residing in the State of New York. And all and singular the estate, right, title, interest, property, claim, and demand whatsoever, both at law and in equity, of the said parties of the first part, and each and every of them, of, into and out of the said hereby assigned premises, or any and every part thereof: to have and to hold, receive and take, the said premises hereby assigned, and every part thereof, unto the said parties of the second part, and the survivor of them, and the heirs, executors, administrators and assigns of such survivor. In trust, nevertheless, and to and for the several uses and purposes hereinafter mentioned and declared, of and concerning the same, (that is to say) upon trust, that the said parties of the second part, and the survivor of them, and the heirs, administrators and assigns of such survivor, do and shall, in such manner and at such time or times, either at public or private sale, and for cash or upon credit, and by and under such terms and prices as they shall think reasonable and proper, absolutely sell, convey, and dispose of all and singular the said estate, property and effects hereby assigned, or so much thereof as can be sold or disposed of; and also do and shall receive, collect, and get in all the residue of the said premises; and by and out of the monies which shall arise from such sale or sales, and which shall be collected, received and gotten in as aforesaid, do pay and discharge, or return and reimburse themselves, for all such costs, charges, expenses, and disbursements as may have been or shall be rightfully paid or incurred by them, or for which they shall or may be liable in and about the execution of the trusts herein contained, or in any wise relating thereto, together with a just and reasonable compensation for their services in this behalf, and in the execution of the trusts herein contained. And then upon the further trusts, that the said parties of the second part, and the survivor of them, and the executors and administrators of such survivor, shall and do pay and satisfy, to Messrs. Jonas Phillips & Sons, of London, and to the individual members of that firm, and to each and every of them, all such sum and sums of money, debts, dues, and demands, as now are due and owing, or which are now contracted, though payable hereafter, by the said parties of the first part, jointly or severally, to the said Jonas Phillips & Sons, or to all, any, or either of the individual members of the said firm; and also lawful interest on the said several sums, from the time they respectively are due until paid. And then, upon the further trusts, to divide and distribute all the residue of the said trust moneys which shall have been by them raised, received, and gotten in as aforesaid, to and among the other creditors of the said parties of the first part, whether their debts be now due and owing,

or are payable hereafter, pari passu, or in equal rateable proportions, according to the amount of their respective just claims and demands. And the said parties of the first part, do hereby jointly and severally covenant and agree to and with the said parties of the second part, and the survivor of them, and the heirs, administrators and executors of such survivor, that they, the said parties of the first part, and each of them, their and each of their heirs, executors, and administrators, shall and will do and execute any other and further lawful and reasonable act, matter or thing whatsoever, as well for conferring these presents as for the further and better granting and assigning the premises in the manner and upon the trusts aforesaid, when thereto required by the said parties of the second part, or the survivor of them, or the heirs, executors, or administrators of such survivor. And it is hereby expressly understood and agreed, by and between the parties to these presents, that the said parties of the second part, or the survivor of them, or the executors or administrators of such survivors, shall be at liberty to compound with any debtor or debtors of the said parties of the first part, whose debt is hereby assigned, as they or he may think fit; and also to refer to arbitration any debt, claim, demand, matter or thing hereby assigned. And the said parties of the first part, in consideration of the premises, do by these presents jointly and severally constitute and appoint the said parties of the second part, and the survivor of them, to be their lawful attorney and attornies, irrevocable in the premises, in their name and stead, or otherwise, as occasion may require, but to and for the several uses, trusts, intents and purposes herein expressed, jointly and severally to ask, demand, sue for and recover, collect and receive, all debts, dues, demands, property, estate, and effects of or belonging to them, and hereby assigned, or meant and intended so to be, and to give proper acquittances and discharges therefor. Also, in the name of the said parties of the first part, or either of them, or otherwise as occasion may require, but to and for the uses, trusts, intents, and purposes aforesaid, to institute, prosecute, defend and pursue to judgment and execution, any suit or suits, either at law or in equity, and in all courts and places whatsoever; and also to compound for, arbitrate and agree, in and about any cause or causes, matters or things whatsoever, that may arise under or in the execution of these presents, or any part or parts thereof. Also, to do, transact and perform, all and every other further and lawful act or acts, deeds, matters and things in and about the premises, as largely, amply, and beneficially, to all intents and purposes whatsoever, as the said parties of the first part, or either of them, might or could do if these presents had not been executed, with full power of substitution and revocation; they, the said parties of the first part, hereby ratifying, confirming and allowing, all and whatsoever the said parties of the second part, or either of them, shall or may jointly or severally lawfully do, or cause to be done,

in the premises, under or by virtue of these presents. And the said parties of the second part severally accept of the trusts hereby reposed in them, and signify their *their* acceptance thereof, by executing these presents.

In witness whereof, the parties to these presents have hereunto set their respective hands and seals, the day and year herein first above written.

I. PHILLIPS, [L. S.]
JOSEPH L. MOSS, [L. S.]
J. MORA MOSS, [L. S.]
DAVID SAMUEL. [L. S.]

Sealed and delivered in the presence of
(The word "second," on the first line of the first page, being written on an erasure, and the words "or either of them," on the said first page, interlined.)
THOS. DUNLAP,
FRANCIS GRIFFIN.

CITY AND COUNTY OF NEW YORK:

On the twenty-third day of March, in the year of our Lord one thousand eight hundred and thirty-seven, before me personally came and appeared Francis Griffin, of the city of New York, to me known as one of the subscribing witnesses to the foregoing conveyance, who, being by me duly sworn, did depose and say, that he resides at No. 18 Vesey street, in the city of New York; that he knows Isaac Phillips, Joseph L. Moss, Joseph M. Moss, and David Samuel, the persons described, and who have severally executed the said conveyance; and that he, the said Francis Griffin, was present and saw the said Isaac Phillips, Joseph L. Moss, Joseph M. Moss and David Samuel severally execute, and heard them severally acknowledge the said conveyance as their act and deed, and that thereupon he, together with Thomas Dunlap, became subscribing witnesses thereto. All which, being to me satisfactory evidence of the due execution of the said conveyance, let it be recorded.

N. W. STRONG,
Commissioner, &c.

I, James Gulick, register for the city and county of New York, do hereby certify, that I have compared the preceding instrument of conveyance with the original of the same, recorded in said office of register, on the twenty-third day of March, 1837, at 30 minutes past 3, P. M., in liber , page , of conveyances, and the same is a correct transcript therefrom, and of the whole of such original record.

(Signed,) W. CORP, *Dep. Reg.*
New York, March 31, 1837.

(B.)

This indenture, made the twenty-second day of June, in the year of our Lord one thousand eight hundred and thirty-seven, by and between Isaac Phillips, of the city of Philadelphia, merchant, and Sarah, his wife, and Joseph L. Moss, of the same city, merchant, and Julia, his wife, the said Isaac Phillips and Joseph L. Moss, being copartners in trade, under the firm of R. & I. Phillips, of the first part, and Joseph M. Moss and David Samuel, of the same city, merchants, of the second part: whereas, the said parties of the first part, on the day of the date of these presents, are justly and truly indebted unto sundry persons in divers sums of money, which by reason of numerous and heavy losses and reverses, they are at present unable fully to pay and satisfy, but are desirous to apply and appropriate their estate and effects, for and toward the payment and satisfaction of their said debts, so far as the same may avail:

Now, this indenture witnesseth, that the said parties of the first part, for and in consideration of the premises and of one dollar to them in hand, at and before the ensealing and delivery of these presents, by the said parties of the second part well and truly paid, the receipt whereof is hereby acknowledged; as also, of divers other good and valuable considerations them thereunto moving, have granted, bargained and sold, assigned, transferred and set over, and by these presents do grant, bargain and sell, assign, transfer and set over unto the said parties of the second part, and to the survivor of them, and to the heirs, executors, administrators and assigns of the said survivor, all and singular the goods and chattels, merchandize, debts, sum and sums of money due, owing or belonging to the said R. & I. Phillips, and all securities had, taken or obtained for the same; and also, all the right, title and interest, property, claim and demand of the then said R. & I. Phillips, of, in and to the same, and any and every part thereof; and the said parties of the second part, for and upon the same considerations as herein before set forth, have also granted, bargained and sold, aliened, enfeoffed, released and confirmed, and by these presents do grant, bargain and sell, alien, enfeoff, release and confirm unto the said parties of the second part, and to the survivor of them, his heirs, executors, administrators and assigns, all and singular the following real estate, that is to say: all that lot or piece of ground situate on the north side of Chesnut street, at the distance of forty-two feet westward from the west side of Schuylkill Seventh street, in the city of Philadelphia, containing in front or breadth on said Chesnut street sixty-six feet, and extending in length or depth, northward one hundred and fifty-eight feet to Linden street, (being the same premises which George H. Thomson and Rebecca H. his wife, granted to the said Isaac Phillips, in fee, by indenture bearing date on the ninth day of June, A. D. 1835, and duly recorded;) and also, all that certain three story brick messuage and lot on the

westerly side of Sixth street, between High and Chesnut streets, in the said city, containing in front or breadth on said Sixth street, twenty-five feet, more or less, and of that breadth extending in length or depth westward to Decatur street, one hundred and seventy-three feet, more or less, with the appurtenances; and also, all that certain messuage or store and lot of ground on the east side of Delaware Front street, between Walnut and Spruce streets, in the said city, containing in front or breadth on the said Front street, nineteen feet, and in length or depth from the said Front street to Water street, about forty-one feet, being the same premises which John Sergeant, of the city of Philadelphia, Esquire, and *and* Margaretta, his wife, by indenture bearing date the second day of June, A. D. one thousand eight hundred and twenty-five, granted and conveyed unto the said Isaac Phillips in fee; and all the right, title and interest, property, claim, estate and demand of them, the parties of the second part or either of them, of, in, or to the said mentioned real estate, with the appurtenances; to have and to hold, receive and take all and singular the said goods and chattels, merchandize, debts, sum and sums of money, securities for the same, rights, credits and estate, real and personal, hereby assigned or mentioned, or intended so to be, with their and every of their appurtenances, unto the said parties of the second part, and to the survivor of them, his heirs, administrators and assigns, from henceforth forever; upon the special trust and confidence nevertheless, and to no other, and to the intent and purpose, that they, the said parties to the second part, the survivor of them, his heirs, executors, administrators and assigns, do and shall with all convenient speed make sale and disposition of all and singular the estate, real and personal, hereby assigned, for the most and best price they can get for the same, and use their best endeavors, by all lawful ways and means, to obtain, recover and receive into their hands and possession, all and singular the said debt, sum and sums of money due and owing to the said R. & I. Phillips; and that after deducting the reasonable expenses of creating and executing this trust, they, the said parties of the second part, the survivor of them, and his heirs, executors, administrators and assigns, shall pay and distribute the proceeds of the said assigned real and personal estate in manner and form following, to wit, that is to say: first, to pay and satisfy in full, sundry small personal accounts due from the said Isaac Phillips, not exceeding eight hundred dollars, and bills of the same character due from the said Joseph L. Moss, not exceeding eight hundred dollars; secondly, to pay and discharge in full to John Moss, Esq., the full amount of his responsibilities incurred by reason of his endorsements, as sterling bills of exchange, to take up drafts of Victor David, of New Orleans, and others, which said endorsements were so made by the said John Moss, subsequent to the suspension of payment by the said R. & I. Phillips, not exceeding three thousand pounds sterling, with all damages,

interest and expenses on said bills; thirdly, to pay and satisfy to the said parties of the second part, the full amount of a certain judgment recovered by the Planters' Bank of Georgia, against the said R. & I. Phillips, for the payment of which, they, the said parties of the second part, have become sureties; fourthly, to pay and satisfy in full to Thomas Dunlap, of the city of Philadelphia, the sum of five hundred dollars due and owing to him from the said R. & I. Phillips, for professional legal service antecedent to this assignment; fifthly, to pay and satisfy in full to Giovanni Baptista Struppa and Ignacio Struppa, the sum of nine hundred and seventy dollars, being the amount collected for them by the said R. & I. Phillips, under and by virtue of a power of attorney to recover a legacy due to them, the said Struppas, in Italy; and after paying and discharging in full the foregoing sums to the several persons above named, in the order specified, then to pay and satisfy in full, all and every the claim and claims of all the other creditors of them, the said R. & I. Phillips, if the balance of the said estate assigned shall prove sufficient so to do; and if it shall not prove so sufficient, then rateably and in proportion; who shall, if resident in the United States, on or before the twenty-first day of August, in the present year, at twelve o'clock, noon, and if resident in Europe, on or before the twentieth day of October, in the present year, at twelve o'clock, noon, execute and deliver to the said R. & I. Phillips, a full, valid and general release of their several and respective claims and demands against them, the said R. & I. Phillips; and for the better and more easy getting in and receiving of all the debts, sum and sums of money now due and owing to the said R. & I. Phillips, and for the general and effectual execution of trust, the said parties of the first part, have made, ordained, constituted and appointed, and by these presents do make, ordain, constitute and appoint the said parties of the second part, and the survivor of them, his executors and administrators, their true and lawful attornies, irrevocable, in the name of the said parties of the first part, or in their or his own names, or otherwise, but to and for the uses and purposes of this trust, to ask, demand, sue for, recover, have and receive of, and from all and every person and persons, in any ways indebted or bound to the said parties of the first part, all and every sum and sums of money by them or him respectively due, and owing unto the said parties of the first part; and upon the receipt thereof or any part thereof, acquittances or other discharges, to make and give, and in case of need to settle, compromise, and compound for all or any of the said debts as they, or the survivor of them shall deem expedient for the interests of the estate; and also for the purposes aforesaid, an attorney or attornies, one or more under them to appoint, and again at pleasure to revoke and reappoint, and to do and perform all and every such further and other reasonable act or acts, thing or things as shall be necessary or expedient for the purposes of this trust; hereby ratifying and confirming, and

holding for firm and effectual, all and whatsoever shall be legally done by their said attornies in the premises, by virtue hereof.

In witness whereof, the said parties have hereunto interchangeably set their hands and seals, the day and year first above written.

IS. PHILLIPS, [L. S.]
JOSEPH L. MOSS, [L. S.]
SARAH PHILLIPS, [L. S.]
JULIA MOSS. [L. S.]

(George, on the fourth page, being first written on erasure.)

Sealed and delivered in presence of us,
THOMAS DUNLAP,
WILLIAM MILNOR.

We, the above mentioned Joseph M. Moss and David Samuel, hereby declare our acceptance of the trust hereby created. Witness our hands and seals, this twenty-second day of June, A. D. 1837.

J. MORA MOSS, [L. S.]
DAVID SAMUEL, [L. S.]

Sealed and delivered in the presence of *us*,
THOS. DUNLAP.

PHILADELPHIA CITY, *ss:*

Be it remembered, that on this twenty-second day of June, in the year of our Lord one thousand eight hundred and thirty-seven, before me the subscriber, one of the aldermen in and for the city of Philadelphia, came the within named Isaac Phillips and Sarah, his wife, Joseph L. Moss and Julia, his wife, and severally acknowledged the within written indenture, as and for their and each of their act and deed, and desired that the same might be recorded as such, according to law; they, the said Sarah and Julia being of full age, separate and apart from *their said their said* husbands, by me examined, and the full contents thereof made known to them, voluntarily consenting thereto, and declaring that they executed the same of their own free wills and accord, without any coercion or compulsion of their said husbands or either of them.

Witness my hand and seal, the day and year above written.

WILLIAM MILNOR. [L. S.]

Recorded, June 22d, 1837.

PHILADELPHIA, *ss:*

I, Samuel H. Fisher, recorder of deeds, &c., for the city and

county of Philadelphia, do hereby certify, the preceding assignment to be a true copy of a certain instrument of writing, remaining to be recorded in my office in deed book *of* S, H, F, No. page &c.

Witness my hand and seal of office, this 22d day of June, A. D. 1837.

(Signed,) SAMUEL H. FISHER, *Rec.*

D.

Know all men by these presents, that I, Isaac Phillips, of the city of Philadelphia, in consideration of five thousand seven hundred and seven dollars, to me in hand paid by Joseph M. Moss, of the city of Philadelphia, merchant, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, and sell unto the said Joseph M. Moss, all the household furniture, goods, and chattels whatsoever, in the annexed schedule mentioned, now remaining and being in the house I occupy, on the south side of Arch street, near Broad street, in the said city; to have and to hold, all and singular, the said household furniture, goods, and chattels, and every of them, unto the said Joseph M. Moss, his executors, administrators, and assigns forever, to and for his own proper use and benefit; and I, the said Isaac Phillips, my heirs, executors, and administrators, the said furniture, goods, and chattels, hereby bargained and sold, will and shall forever warrant and defend against all persons whomsoever.

In witness whereof, I have hereunto set my hand and seal, this third day of June, in the year of our Lord one thousand eight hundred and thirty-seven.

ISAAC PHILLIPS. [L. S.]

Sealed and delivered, and the possession of the said chattels delivered to the said Joseph M. Moss, in presence of us,

JNO. DUNLAP,
JOHN R. WELSH.

1 Parlor carpet,	$70 00
2 Chamber do.,	30 00
1 Sideboard,	20 00
24 Chairs,	100 00
4 Chamber looking-glasses,	50 00
4 Tables,	50 00
2 Bedsteads,	40 00
3 Do.,	20 00
Glass and China,	50 00
Piano Forte,	150 00
2 Pier tables,	30 00
Sundry chamber furniture,	20 00

Book case,	$60 00
Sofas,	30 00
Kitchen furniture,	40 00
Sundries, silver,	100 00
	Dollars 860 00

E.

Bell, De Yough & Co. book ac't,	$4,406 25
Baker & Moss do.,	145 50
Bills payable,	535,809 12
Brown, Joseph, note,	1,942 22
Borie, J. J. do.,	6,069 44
Boller, H. do.,	3,062 20
Bullick, Davis, & Co. do.	876 44
Boller, Wm. do.,	2,438 89
Consignment, drugs,	684 26
Do. oil,	1,194 15
Courselle, L. book ac't,	25 56
Denckla, A. H. note,	4,855 56
Eustace, J. H. notes,	8,928 77
Exchange in Co., Hermanns,	14,547 97
Elmes & Co., Thomas, book ac't,	644 03
Hagedorn, Leopold & Co. note,	4,183 51
Hulem, Tho's do.,	2,000 00
Hupfeld, C. F. note,	364 29
Kentucky bank book ac't,	1,740 66
Lyon, J. Levy, note,	3,362 31
Lewis & Co., do.,	4,855 56
Lizardi, & Co., F. de, book ac't,	63,191 00
Levy & Colgate, do.,	128 32
Liddard, Wm. do.,	252 19
Levy, J. C. do.,	1,830 13
McKean, Henry Pratt, notes,	16,584 44
Mustin, J., note,	971 11
Moss, John, book ac't,	851 25
Morris Canal Co., do.,	4,034 82
Natt, Tho's, note,	1,460 00
Phillips, Isaac, book ac't,	481 59
Phillips & Sons, Jonas, do.,	125,576 50
Pennsylvania loan, do.,	2,700 00
Quicksilver in Co.,	3,323 30
Rawlins, S. D., book ac't,	1,091 52
Rothschild & Sons, N. M., do.,	25,595 31
Rothschild, Frères, do.,	90,562 44
Sharpless, Townsend, note,	971 11
Sartori, J. B., book ac't,	1,532 81

Suspense, Elmes & Co., book ac't,	$3,075 95
Tirante, H. J., do.	994 23
Thonspecken, note,	236 66
United States do.	50 12
Wilson & Hallett, book ac't,	195 53
Walker, H. M., note,	4,900 00
Wardle, Tho's, do.	4,456 79
Wecht, Werner & Co., note,	8,438 89
Weber & Co., G., notes,	20,095 70
Strappa, G. B., book ac't,	952 67
Henrion, S., note,	849 00
	$987,520 07

IS. PHILLIPS.

(C.)

Bald Eagle Navigation Co.,	$11,294 85
Barrett & Co., Thomas,	132,545 06
Bills receivable, sundry promissory notes,	123,607 64
Biddle & Co., Tho's,	424 42
Cook, William Wallace,	208 97
Camel's hair,	147 65
Clark, Jacob,	20 00
Cash in bank,	271 83
Desilver, Thomas & Co.,	1,215 08
David, Victor,	20,738 06
Eaton, Wm. Jarvis,	101 74
Elmira railroad,	250 00
Fryer & Anderson,	30,000 00
Fernandez, H. J.,	3,549 03
Freeland, Aaron,	801 09
Flemington & Co.,	27 71
Gratz, J.,	100 00
Gratty, D.,	55 75
Grain, importation of	6,346 45
Goodman & Daniels,	26,671 28
Harper & Co., C. A.	23,281 18
Hermann & Co.,	228 33
Do.,	8,834 18
Hermann & Sons, Samuel	3,241 52
Do.,	20,801 52
Hopkins, Nicholas	75 00
Israel, M. E.	141 41
Joseph & Co., J. L. & S.	24,367 32
Do.,	91,000 00
Levy, J. C.	8,561 60

Louisiana Co.,	$159 62
Lizardi & Co. M. de	357 04
Lentzinger & Co.,	90 00
Linn & Riche,	427 86
Lazarus, H.	1,000 00
Loyd, Isaac	79,681 28
Plate glass, importation	411 67
Lot on Chestnut street,	20,000 00
House in 6th street,	38,000 00
House in Front street,	5,000 00
Richards, G. W.	4,900 00
Saint, Daniel	1,000 00
Sherry wine,	373 33
Straw hats,	485 44
Steam Towboat Co.,	500 00
Shipment turpentine,	507 86
Stern, Julius,	100 00
Sartari, V. A.	5,688 28
Sayres, Converse & Co.,	19,119 21
Shipment tobacco,	1,109 36
Smith, William,	265 00
Small, R.	119 25
Swain, J. L.	1,500 00
Smith & Brown,	3,045 50
Spanish wool,	4,713 63
Toby & Co., Tho's	1,967 06
Welsh, J. R.	514 17
Wardle & Co.,	2,469 67
Household furniture,	6,000 00
Goods in New York, which passed under assignment, March 22, 1837,	168,345 00
	$906,158 90

IS. PHILLIPS.

E.

Bills payable detailed.

Acceptance of sundry bills drawn by	Tho's Barrett & Co.,	$177,500 00
Ditto,	Daniels & Goodman,	26,671 28
Ditto,	David, Victor,	20,000 00
Our note favour of Desilver Thomas & Co.,	Desilver, Thomas, & Co.,	7,642 41
Ditto, W. D. Lewis, Girard Bank,		20,000 00
Ditto,	James Barron & Co.,	1,930 00

Our note favor of	J. K. Eyre,	$414 06
Ditto,	Fryer & Anderson,	36,896 89
Ditto,	Hagedora, Leopold & Co.,	1,926 29
Ditto,	Isaac S. Loyd,	118,056 50
Ditto,	Linn & Riche,	1,253 95
Ditto,	Lapsley, J. B.	773 98
Ditto,	J. M. Moss,	1,500 00
Ditto,	New Castle Manuf'g Co.,	6,292 66
Ditto,	G. R. Smith,	1,817 63
Ditto,	Smith & Brown,	2,916 07
Ditto,	J. L. Swain,	1,455 00
Ditto,	S. F. Smith,	600 00
Our acceptance sundry bills drawn by		
	John H. Eustace,	46,975 47
Ditto,	Hermann & Sons,	2,402 45
Ditto,	J. L. & S. Joseph & Co.,	11,000 00
Ditto,	Sayres, Converse & Co.,	16,242 12
Ditto,	V. A. Sartori,	1,934 10
Ditto,	J. C. Levy,	29,608 26
	Dolls.	535,809 12

C.

Bills receivable detailed.

J. L. & S. Joseph & Co., notes for	$57,671 43
Jackson Riddle, & Co., acceptance,	445 23
Samuel Hermann & Sons, dft.	2,030 45
Isaac M. Moss' notes,	1,500 00
J. D. & A. D. Buck,	1,170 67
J. P. Flagg,	933 67
Chapron & Nidelet, notes	419 18
Richard Oakley, do.	323 00
Fryer & Anderson,	2,645 95
William Wood & Co.	298 30
J. & W. Penfold & Co.	172 12
Isaac S. Loyd,	400 00
John P. Flagg,	1,867 35
Kilborn, & Co.	1,264 50
S. G. Taylor & Co.	1,034 86
Crandell & Co.	595 04
R. P. Dentry,	200 00
L. J. Levy,	3,246 43
J. V. Matchett,	272 22
William Halsey & Co.	1,588 86
Delano & Whitney,	274 44

Haviland & Co.	$310 14
Charles Freeman,	1,181 48
H. M. & B. B. Hart,	847 50
George Burrell,	1,863 80
Edward C. Biddle,	9,092 35
Vansyckell & Randall,	134 46
William Berger,	475 47
See & Remington,	2,588 58
Francis R. Rhodes, & Co.	18,221 05
C. F. Raymond & Co.	1,000 00
Charles Squire,	710 00
George Coggill & Sons	184 62
Reaugh & Douglass,	2,818 41
W. & L. Fry,	395 06
J. Evans & Co.	2,507 76
J. J. & F. Trippe,	696 98
J. H. Cary & Co.	900 00
Charles Barney,	900 00
W. C. & F. Webb.	426 25
	$123,607 64

E.

Liabilities by endorsement.

To the Girard Bank—Joseph & Co. notes discounted,		$78,000 00
Jackson & Riddles'		4,040 60
To the Philadelphia Bank—Jackson & Riddles', dis'd		3,045 67
To the United States Bank—Samuel Comley, dis'd		2,302 52
Joseph & Co. do.		11,000 00
Our bills on Sydney Warwick, London	£9,498 08 07	
Endorsement on Joseph, & Co. bills, on N. M. Rothschild & sons, London	20,000 00 00	
To James Fassit & Co., endorsement on Joseph & Co., bill	£3,000 00 00	
To Wecht, Werner & Co., endorsement on Joseph & Co., bill	1,600 00 00	
To H. M. Walker, endorsement on bills	3,002 05 02	
To Hobson, Sons & Co. do "	2,400 00 00	
To F. de Lizardi & Co., Barrett's bills endorsed,	6,597 14 10	

To F. de Lizardi & Co., Barrett's bills,
J. H. Eustace, - - - £7,886 12 1

£53,985 00 08

To John H. Eustace—Joseph & Co., notes discounted $4,465 00

To John Moss for his endorsement of bills on England, forwarded by Victor David £3,000

To bills on England for which no value is received and their fate unknown, favor

H. P. McKean, - - -	£18,000
Nicholas Hopkins, - -	1,000
C. & F. King, - - -	1,000
J. Gratz, - - -	1,500
J. R. Welsh, - - -	100
Wm. Wallace Cook, - -	1,475
	£23,075

IS. PHILLIPS.

E.

In the following cases judgments have been obtained; these are included in the list of creditors.

Charles McCalester,
Houston & Co.
G. Louvig,
V. Ehrmann,
John Welsh,
De Lizardi & Co.
T. Natt,
Desilver, Thomas & Co.
H. M. Walker,
Planters & Mech's Bk. of S. C.
Catherwood,
Rothschild,
} vs. R. & I. Phillips.

These judgments are all in the District Court for the city and County of Philadelphia.

IS. PHILLIPS.

Whereupon it was ordered by the said court, that he give notice to his respective creditors to appear at the court-house in said city, on the eighteenth day of October then next, to show cause, if any

they have, why he should not receive the benefit of the provisions of the said acts of Assembly; and he having appeared before the said court, on the eighteenth day of October, pursuant to the order of the said court, and afterwards on the nineteenth day of October, (his application having been continued to that day,) and it appearing that he had given public notice in the Pennsylvania Inquirer, and Philadelphia Gazette, two daily newspapers published in the city of Philadelphia, to the several creditors of the said petitioner mentioned, and marked in the list exhibited with the said petition, notifying the said creditors of the time and place appointed by the said court for proceeding upon the said petition; and the court having examined into the matter of the said petition, and no cause being shown why the prayer of the petitioner should not be granted, he took the oath prescribed by law, for the relief of insolvent debtors; and he having made an assignment of all his estate, real and personal, in trust, for the use and benefit of all his creditors, to he the said Isaac Phillips was discharged; and it was thereupon ordered by the said court, that the said petitioner shall not at any time thereafter be liable to imprisonment by reason of any judgment or decree obtained for payment of money only, or for any debt, damage, costs, sum or sums of money, contracted, accrued, occasioned, owing or becoming due, before the time of such assignment.

In testimony whereof, I have hereunto set my hand, and affixed the seal of the said court, at Philadelphia, this [L. S.] twelfth day of October, in the year of our Lord one thousand eight hundred and forty.

S. HART, *Prothonotary.*

44.

Sir,—I beg to inform you, that my son-in-law, Mr. Isaac Phillips, brother to the late Mr. Robert Phillips, is expected hourly from Europe. That being the case, it will be useless and incorrect for any one to take out letters of administration for the estate of Robert Phillips, dec'd. To prohibit any body from doing the same, I hereby, for the above good reason, put a caveat against any such letters of administration being taken out.

Your attention to this, will oblige your obed't servant,

J. MOSS.

December 10th, 1833.

To John Moss, Esq., Probate of Wills, &c.

45.

COMMONWEALTH OF PENNSYLVANIA,
City and County of Philadelphia, ss.

To JOHN MOSS, Esq.

[L. S.] Whereas, your caveat, dated December 18th, 1833, is filed in our Register's office, in and for the city and county of Philadelphia, requiring, for reasons therein stated, that letters of administration should not then be granted on the estate of Robert Phillips, deceased; since which, by the operation of said caveat, letters of administration have not yet been granted on said estate, by which the interests of said estate may be in suffering, and the payment of the collateral inheritance tax is unattended to, whereby the Commonwealth is suffering, you are therefore by these presents required and commanded, to be and appear at our said Register's office, before our said Register, on or before ten o'clock, on Wednesday, the eighth day of February next ensuing the date hereof, in the morning of said day, and show cause, if any you have, why the operation of said caveat should not be removed, and letters of administration on the estate of said Robert Phillips, dec'd, should not be granted to George W. South, Esq., Receiver of the collateral inheritance tax, or other person, by which the interests of said estate, and also the interests of the Commonwealth of Pennsylvania, be protected and respected.

Given under my hand, and seal of our said Register's office, the 30th day of January, A. D. 1837.

(J. G.) JOHN GEST, *Register.*

A true copy of the above citation was served on John Moss, Esq., personally, at his dwelling-house, No. 189, Spruce street, on January 31st, 1837, at ½ past 2 o'clock, in the afternoon, by me.

JOSEPH GEST.

39.

Notice read at Assignees' Sale.

Bidders will please take notice, that the property on the north side of Chesnut street, 42 feet west of Schuylkill Seventh street, being 66 feet front, by 158 feet deep; and also that on the west side of Delaware Sixth street, between Market and Chesnut streets, formerly known as Rubican's hotel, have been levied upon as the property the late firm of R. & I. Phillips, and are actually advertised for sale by the Sheriff; and that the right of the assignees of

R. & I. Phillips to convey any title to either of said properties is disputed and denied.

C. FALLON.

29th April, 1839.

22 *B.*

[Here insert the Record in relation to Berthond's Petition.]

48.

Ann W. Morris, to Joseph L. Moss—Deed.

This indenture, made the thirty-first day December, in the year of our Lord one thousand eight hundred and thirty-four, between Ann W. Morris, of the county of Philadelphia, widow, of the one part, and Joseph L. Moss, of the city of Philadelphia, merchant, of the other part, witnesseth: that the said Ann W. Morris, as well for, and in consideration of the mortgage debts hereinafter mentioned, and which the said Joseph L. Moss hereby agrees to satisfy, pay off, discharge and to save harmless, and to fully indemnify the said Ann W. Morris, her heirs, executors and administrators, of, for, and concerning the same, as well as of the sum of three thousand dollars, lawful money of the United States, by the said Joseph L. Moss, to her in hand paid, at and before the ensealing and delivery hereof, the receipt whereof is hereby acknowledged, hath granted, bargained and sold, aliened, enfeoffed, released and confirmed, and by these presents doth grant, bargain and sell, alien, enfeoff, release and confirm unto the said Joseph L. Moss, his heirs and assigns, all that certain three story brick messuage or tenement, back buildings, and lot or piece of ground thereunto belonging, situate on the south side of Walnut street, at the distance of twenty-one feet, and eastward of Juniper street, in the said city of Philadelphia, containing in front or breadth on the said Walnut street, twenty-one feet; and in length or depth southward, extending one hundred and seventy feet, to a thirty feet wide street, lately laid out and opened, leading from the said Juniper street to Thirteenth street; bounded on the north by said Walnut street; on the east, by a messuage and lot of ground, granted and conveyed by Peter Fritz, and wife, to Rowland Stevenson; on the south, by the aforesaid thirty feet wide street; and on the west, by a lot of ground belonging to John and William Crean, being the same premises which John Crean, junior, and wife, and William Crean, by indenture, dated the eleventh day of November, anno Domini 1834, and recorded at Philadelphia, in the office for recording of deeds, in deed-book A. M., No. 54, page 487, &c., granted and conveyed to the said Ann W. Morris, in fee—subject to a certain indenture of mortgage, made and executed by the said John Crean, junior, and William Crean, dated the twenty-

eighth day of October, anno Domini 1833, recorded in the aforesaid office, in the mortgage-book A. M., No. 17, page 298, &c., wherein and whereby the said premises, with the appurtenances, were granted, in mortgage, unto the "Pennsylvania Company for Insurance on Lives, and granting Annuities," their successors and assigns, for securing the payment of a debt, or principal sum of eight thousand dollars, with lawful interest, agreeably to a bond or obligation therein recited; together with the common use and privilege of the said thirty feet wide street, with or without horses, cattle and carriages, at all times hereafter forever; and together, also, with all and singular other the buildings and improvements, ways, streets, alleys, passages, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging, or in any wise appertaining; and the reversions and remainders, rents, issues and profits thereof; and all the estate, rights, title, property, claim and demand whatsoever of her the said Ann W. Morris, of, in, and to the same, and every part thereof; to have and to hold the said three story brick messuage or tenement, back buildings, and lot or piece of ground herein before described, hereditaments and premises hereby granted or mentioned, and intended to be, with the appurtenances, unto the said Joseph L. Moss, his heirs and assigns, to and for the only proper use and behoof of the said Joseph L. Moss, his heirs and assigns forever; under and subject, nevertheless, to the payment of the aforesaid mortgage debt, or principal sum of eight thousand dollars, with interest thereon, accrued and to accrue unto the Pennsylvania Company for insurances on Lives and granting Annuities aforesaid, their successors and assigns.

And the said Ann W. Morris, for herself, her heirs, executors and administrators, doth hereby covenant and agree to and with the said Joseph L. Moss, his heirs and assigns, that she, the said Ann W. Morris, and her heirs, all and singular, the hereditaments and premises hereby granted and described, mentioned and intended so to be, with the appurtenances, (subject as aforesaid,) unto the said Joseph L. Moss, his heirs and assigns, against the said Ann W. Morris, and her heirs, and against all and every other person and persons whomsoever, lawfully claiming, or to claim the same or any part thereof, by, from or under her, them or any of them, shall and will warrant and forever defend, by these presents.

In witness whereof, the said parties have hereunto, interchangeably, set their hands and seals, the day and year first above written.

ANN W. MORRIS. [L. S.]

Sealed and delivered in the presence of us,
THO'S W. MORRIS,
JOHN BINNS.

Received on the day of the date of this indenture, of the above

named Joseph L. Moss, the sum of three thousand dollars, which together with the above mentioned mortgage debt, or principal sum of eight thousand dollars, is the full consideration money above specified.

ANN W. MORRIS.

Witness,
THO'S W. MORRIS,
JOHN BINNS.

On the second day of January, A. D. 1835, before me, the subscriber, one of the Aldermen of the city of Philadelphia, personally appeared the above named Ann W. Morris, and acknowledged the above indenture to be her act and deed, and desired the same, as such, might be recorded according to law.

Witness my hand and seal, the day and year aforesaid. (The words "the above," in the third line, being first written on an erasure.)

JOHN BINNS, *Ald.* [L. S.]

No. 37.—Advertisement of peremptory sale by order of assignees—valuable Chestnut street lot. Lot, 66 feet front, 158 feet deep, nearly opposite the elegant residence of Mrs. Blight.

On Tuesday, April 30, 1839, at 8 o'clock in the evening, will be sold at public sale, at the Philadelphia Exchange, No. 1, all that valuable lot of ground situate on the north side of Chestnut street, forty-two feet west of the Schuylkill Seventh st., containing in front on Chestnut street 66 feet, and in depth 158 feet, to Linden street, *clear of all incumbrances; title indisputable.*

*** The above is one of the most desirable building lots in Chestnut street, nearly opposite the splendid property of Mrs. Blight, and adjoining that of Dr. Gibson.

No. 2. Four story brick messuage, known formerly as Rubican's Hotel, latterly, as the American House, Delaware Sixth st., No. 18, between Market and Chestnut streets. All that extensive and valuable four story brick messuage and lot of ground, situate on the west side of Delaware Sixth street, between Market and Chestnut streets, containing in front on Sixth street, twenty-five feet, more or less; and extending in depth about 175 feet to Decatur street. The house extends the entire depth of the lot, about 175 feet, narrowing in the centre, so as to leave a small side yard, widening again on the west, so as to occupy the whole 25 feet on Decatur street, having two valuable fronts. It is nearly new, well built, and replete with conveniences for an extensive hotel, for which purpose it was built and occupied, and is a first rate location; *clear of all incumbrances.*

☞ The titles to both those properties are undoubted, and they will *positively be sold without reservation.*

By order of the assignees.

M. THOMAS & SON, *Auct'rs.*

Sale, valuable Hotel, 6th st.

Conditions of sale—One third cash on the execution of the deed, say within ten days from sale; one third in one year, and the remaining third in two years; secured by bond and warrant of attorney, and mortgage, with interest at six per cent. per annum, payable semi-annually.

☞ I become purchaser on the above terms, April 30th, 1839, $ 20,500.

Signed, WM. R. HANSON.

Chestnut st. lot, $ 16,000.

WM. R. HANSON.

No. 32.

THE FARMERS' BANK OF VIRGINIA,
vs.
ISAAC PHILLIPS & JOSEPH L. MOSS, trading under the firm of R. & I. Phillips. } 574.

Ch'y & Chester, H. M. Phillips.
Fi. fa., S. 38. Attach't sur judg't D. 38.

Summ't case ex., Dec. 21.
Ret. 1 mon., Jan'y—"Service accepted."

Jan'y 22, 1838, by agreement filed, judg't for pl'ff, for the sum of twenty thousand five hundred and twenty-four dollars 53 cents, subject to discharge of def'ts under the insolvent laws, Jan'y 22, 1838—judgment, June 8, 1838, marked to use of John H. Eustace.
By order of pl'ffs att'y.

No. 33.

VICTOR EHRMAN,
vs.
ISAAC PHILLIPS & JOSEPH L. MOSS, trading under the firm of R. & I. Phillips. } 299.

O. Thompson, Dunlap.
May 27, 1837—copy of note filed.

Sum't case ex. May 18.
Ret. 1 mon., June—"Served."

June 24, 1837, on motion of Mr. Thompson, judgment for want of an affidavit of defence.

June 24, 1837, judgment.
June 24, 1837, damages assessed at $ 5,158 32.

April 30, 1838—this judgment is marked to the use of Isaac L. Loyd.

OSWALD THOMPSON,
for Pl'ff.

1840, June 20th, Proth'y, &c. pd.

No. 34.

HENRY M. WALKER,
vs.
ISAAC PHILLIPS & JOSEPH L. MOSS, trading under the firm of R. & I. Phillips. } 337.
Haly, Dunlap.

June 6, 1837, copy of bill of exchange filed.

Sum't case, ex. May 22.
Ret. June—"Served."

June 24th, 1837, on motion of Mr. Haly, judgment for want of an affidavit of defence.
Proth'y to assess damages.
June 24, 1837, judgment.
July 1, 1837, damages assessed at $5,979 36.

No. 35.

JOSEPH M. THOMAS, and JOSEPH T. HILBORN, trading under the firm of Desilver, Thomas & company,
vs.
ISAAC PHILLIPS & JOSEPH L. MOSS, trading under the firm of R. & I. Phillips. } 391.
Peters, Dunlap.

Sum't case ex. May 23.
Ret. 1 mon. June—"Served."
May 14, 1840, dam. assessed at $3,221 61

May 24, 1837, statement and copy of notes on which suit is brought, filed.
Fi. fa. D. 40, 449.

No. 49.—Deed from Joseph L. Moss et al. to David Samuel, 20th March, 1837.

This indenture, made the twentieth day of March, in the year of our Lord one thousand eight hundred and thirty-seven, between Joseph L. Moss, of the city of Philadelphia, merchant, and Julia, his wife, of the one part, and David Samuel, of the same city, merchant, of the other part, witnesseth: that the said Joseph L. Moss and Julia, his wife, for and in consideration of the sum of fifteen thousand dollars lawful silver money of the United States of America, unto them well and truly paid by the said David Samuel, at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released and confirmed, and by these presents, do grant, bargain, sell, release and confirm, unto the said David Samuel, his heirs and assigns, all that certain three story brick messuage or tenement, and lot or piece of ground thereunto belonging, situate on the south side of Walnut street, at the distance of twenty-one feet eastward of Juniper street, in the said city of Philadelphia, containing in front or breadth on the said Walnut street, twenty-one feet; and in length or depth southward, extending one hundred and seventy feet to a thirty feet wide street, lately laid out and opened, leading from the said Juniper street to Thirteenth street; bounded on the north by the said Walnut street, on the east by a messuage and lot of ground granted and conveyed by Peter Fritz, and wife, to Rowland Stevenson; on the south by the aforesaid thirty feet wide street, and on the west, partly by a messuage and lot of ground lately granted and conveyed by the said Joseph L. Moss and wife to Sarah Maccoun, and partly by a lot of ground next herein described; and also, all that certain lot or piece of ground, situate on the north side of the aforesaid thirty feet wide street, and east side of the said Juniper street, in the said city of Philadelphia, containing in breadth east and west, twenty-one feet, and in length or depth, north and south, fifty-nine feet three inches; bounded on the north by the above mentioned lot of ground, lately granted and conveyed by the said Joseph L. Moss and wife to Sarah Maccoun; on the east, by the lot of ground first herein described; on the south, by the aforesaid thirty feet wide street; and on the west, by Juniper street aforesaid. (The said messuage or tenement and lot or piece of ground first herein described, being the same premises which Ann W. Morris, of the county of Philadelphia, widow, by indenture, dated the thirty-first day of December, anno Domini eighteen hundred and thirty-four, recorded at Philadelphia in deed book, A. M., No. 56, page 306, &c., granted and conveyed unto the said Joseph L. Moss, in fee simple, subject to the payment of a certain mortgage debt, or principal sum of eight thousand dollars, and interest, as therein mentioned, but which mortgage debt has been discharged and satisfied. And the said lot or piece of ground, last herein described, being the

southernmost part, or rear end of a larger lot of ground, which John Crean, and Margaretta, his wife, and William Crean, by indenture, dated the nineteenth day of October, anno Domini eighteen hundred and thirty-five, recorded at Philadelphia, in deed book A. M., No. 61, page 667, &c., granted and conveyed unto the said Joseph L. Moss, in fee simple.) Together with the common use and privilege of the said thirty feet wide street, with or without horses, cattle and carriages, at all times hereafter forever; and together also with all and singular, the buildings and improvements, ways, streets, alleys, passages, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging, or in any wise appertaining; and the reversions and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of them, or either of them, the said Joseph L. Moss, and Julia, his wife, of, in and to the same and every part and parcel thereof: To have and to hold the said three story brick messuage or tenement and two lots or pieces of ground above described, hereditaments and premises hereby granted or mentioned, and intended so to be, with the appurtenances, unto the said David Samuel, his heirs and assigns, to and for the only proper use and behoof of the said David Samuel, his heirs and assigns, forever; subject, nevertheless, with respect to the lot of ground last herein described, to a certain covenant restricting the erection of buildings thereon, contained in a certain indenture from the said Joseph L. Moss and wife to the said Sarah Maccoun, dated the twenty-first day of November, anno Domini eighteen hundred and thirty-six, and recorded in deed book S. H. F., No. 10, page 291, &c.; and the said Joseph L. Moss for himself, his heirs, executors and administrators, doth hereby covenant and agree to and with the said David Samuel, his heirs and assigns, by these presents, that he, the said Joseph L. Moss, and his heirs, all and singular, hereditaments and premises hereby granted or mentioned, and intended so to be, with the appurtenances, (subject as aforesaid,) unto the said David Samuel, his heirs and assigns, against him, the said Joseph L. Moss, and his heirs, and against all and every other person and persons whomsoever, lawfully claiming or to claim the same, by, from or under him, them or any of them, shall and will warrant and forever defend.

In witness whereof, the said parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.

J. L. MOSS, [L. S.]
JULIA MOSS. [L. S.]

Sealed and delivered in the presence of us,
S. W. THACKARA.
E. L. MOSS.

Received the day of the date of the above written indenture, of

the above named David Samuel, the sum of seven thousand dollars, which, together with a certain mortgage debt, or principal sum of eight dollars, and the interest hereafter thereon accruing, secured upon the messuage and lot of ground first in the above written indenture described, by an indenture of mortgage given and executed by the said Joseph L. Moss to "The Pennsylvania Company for Insurance on Lives and granting Annuities," dated the twenty-seventh day of January, anno Domini 1835, to be paid and discharged by the said David Samuel, is the full consideration money above mentioned.

J. L. MOSS.

Witnesses at signing,
S. W. THACKARA,
E. L. Moss.

The twentieth day of March, anno Domini, 1837, before me, the subscriber, an Alderman of the city of Philadelphia, personally appeared the above named Joseph L. Moss, and Julia, his wife, and acknowledged the above written indenture to be their act and deed, and desired the same, as such, might be recorded according to law; the said Julia being of full age, by me separate and apart from her said husband examined, and the contents of the said indenture being made known unto her, did declare that she did voluntarily, and of her own free will and accord seal, and, as her act and deed, deliver, the said indenture, without any compulsion or coercion of her said husband.

Witness my hand and seal, the day and year aforesaid.
[L. S.]

J. BURDEN, *Ad'n.*

Recorded March 21st, 1837.

I, George Smith, recorder of deeds, &c., for the city and county of Philadelphia, do certify the within and foregoing to be a true copy of a certain of writing remaining of record in my office, in deed book S. H. F., No. 8, page 654, &c.

Witness my hand and seal of office, this 27th day of October, anno Domini 1840.
[L. S.]

G. SMITH, *Rec.*

No. 50.

Deed—David Samuel et ux. to Joseph L. Moss.

This indenture, made the twenty-fifth day of March, in the year of our Lord one thousand eight hundred and thirty-seven, between David Samuel, of the city of Philadelphia, merchant, and Hetty, his wife, of the one part, and Joseph L. Moss, of the said city,

merchant, of the other part, witnesseth: that the said David Samuel and Hetty, his wife, for and in consideration of the sum of fifteen thousand dollars, lawful silver money of the United States of America, unto them well and truly paid by the said Joseph L. Moss, at and before the sealing and delivery hereof, the receipt is hereby acknowledged, have re-granted, bargained, sold, released, and confirmed, and by these presents do re-grant, bargain, sell, release, and confirm, unto the said Joseph L. Moss, his heirs and assigns, all that certain three story brick messuage or tenement, and lot or piece of ground thereunto belonging, situate on the south side of Walnut street, at the distance of twenty-one feet eastward of Juniper street, in the said city of Philadelphia, containing in front or breadth on the said Walnut street, twenty-one feet, and in length or depth southward, extending one hundred and seventy feet to a thirty-feet wide street, lately laid out and opened, leading from the said Juniper street to Thirteenth street; bounded on the north by the said Walnut street; on the east, by a messuage and lot of ground granted and conveyed by Peter Fritz and wife to Rowland Stevenson; on the south, by the aforesaid thirty feet wide street; and on the west, partly by a messuage and lot of ground lately granted and conveyed by the said Joseph L. Moss and wife to Sarah Maccoun, and partly by the lot of ground next herein described. And also, all that certain lot or piece of ground situate on the north side of the aforesaid thirty feet wide street, and east side of the said Juniper street, in the said city of Philadelphia, containing in breadth, east and west, twenty-one feet, and in length or depth, north and south, fifty-nine feet three inches; bounded on the north by the above-mentioned lot of ground, lately granted and conveyed by the said Joseph L. Moss and wife to Sarah Maccoun; on the east, by the lot of ground first herein described; on the south, by the aforesaid thirty feet wide street; and on the west, by Juniper street aforesaid; (being the same premises which the said Joseph L. Moss and Julia, his wife, by indenture bearing date the twentieth day of March, instant, recorded at Philadelphia in deed book S. H. F., No. 8, page 654, &c., granted and conveyed unto the said David Samuel in fee;) subject, with respect to the lot of ground last herein described, to a certain covenant restraining the erection of buildings thereon, contained in a certain indenture from the said Joseph L. Moss and wife to the said Sarah Maccoun, dated the twenty-first day of November, anno Domini one thousand eight hundred and thirty-six, and recorded in deed book S. H. F., No. 10, page 297, &c.; reference being had to the said two several recited indentures, will more fully and at large appear; (together with the common use and privilege of the said thirty feet wide street, with or without horses, cattle, and carriages, at all times hereafter, forever.) And together, also, with all and singular the buildings and improvements, ways, streets, alleys, passages, waters, water courses, rights, liberties,

privileges, hereditaments, and appurtenances, whatsoever thereunto belonging, or in anywise appertaining; and the reversions and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, property, claim, and demand whatsoever of them, or either of them, the said David Samuel and Hetty, his wife, at law in equity or otherwise, howsoever, of, in, and to the same, and every part thereof. To have and to hold the said three story brick messuage or tenement, and two lots or pieces of ground above described, hereditaments and premises hereby granted, or mentioned and intended so to be, with the appurtenances, unto the said Joseph L. Moss, his heirs and assigns, to and for the only proper use and behoof of the said Joseph L. Moss, his heirs and assigns, forever; subject, as respects the lot of ground last herein described, to the above recited restriction. And the said David Samuel, for himself, his heirs, executors, and administrators, doth hereby covenant and agree, to and with the said Joseph L. Moss, his heirs and assigns, by these presents, that he, the said David Samuel and his heirs, all and singular the hereditaments and premises hereby granted, or mentioned and intended so to be, with the appurtenances, (subject as aforesaid,) unto the said Joseph L. Moss, his heirs and assigns, against him, the said David Samuel, and his heirs, and against all and every other person and persons whomsoever, lawfully claiming or to claim the same, by, from, or under him, them, or any of them, shall and will warrant and forever defend.

In witness whereof, the said parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.

DAVID SAMUEL, [L. S.]
HETTY SAMUEL. [L. S.]

Sealed and delivered in the presence of us,
S. W. THACKARA,
JOSEPH BURDEN.

Received, the day of the date of the above written indenture, of the above named Joseph L. Moss, the sum of seven thousand dollars, which, together with a certain mortgage debt, or principal sum of eight thousand dollars, and the interest hereafter thereon accruing, secured upon the said messuage and lot of ground first in the above written indenture described, given and executed by the said Joseph L. Moss, to the Pennsylvania Company for insurances on lives and granting annuities, is the full consideration money above mentioned.

DAVID SAMUEL.

Witnesses at signing,
S. W. THACKARA,
JOSEPH BURDEN.

The twenty-fifth day of March, anno Domini 1837, before me, the subscriber, an alderman of the city of Philadelphia, personally appeared the above named David Samuel and Hetty, his wife, and acknowledged the above written indenture to be their act and deed, and desired the same, as such, might be recorded according to law. The said Hetty, being of full age, by me, separate and apart from her said husband, examined, and the contents of the said indenture being made known unto her, did declare that she did, voluntarily and of her own free will and accord, seal, and, as her act and deed, deliver the said indenture, without any compulsion or coercion of her said husband.

Witness my hand and seal, the day and year aforesaid.

J. BURDEN, *Ald.* [L. S.]

Recorded March 27th, 1837.

I, George Smith, recorder of deeds, &c., for the City and County of Philadelphia, do certify the above and foregoing to be a true copy of a certain instrument of writing, remaining of record in my office, in deed book S. H. F., No. 12, page 375, &c.

Witness my hand and seal of office, this 27th day of October, anno Domini, 1840.

G. SMITH, [L. S.]
Rec'r.

No. 53.

FARMERS' BANK OF VIRGINIA, *vs.* R. and I. PHILLIPS. } District Court for the City and County of Philadelphia, Dec. Term, No. 574.

The judgment in the above case was marked to the use of John H. Eustace on the record, on the 8th day of June, A. D. 1838.

Certified from the record.

[L. S.]

WM. V. PETTIT,
Prothonotary.

No. 54.

Letter from R. and I. Phillips to J. H. Eustace, February 13th, 1837.

Philadelphia, February 13th, 1837.

MR. JNO. H. EUSTACE,
Richmond.

Dear Sir,—Your valued favor of 10th to hand. We prefer you

to draw on us at 90 days, for 30 or 40,000 dollars, with the proceeds, (as you say) to be left in bank a few days.

Please to send us sterling or French bills, if to be had, the former at no higher than 10½, and latter 5 20 or 5 22½. If neither, be pleased to send us Bank of Virginia notes. We would prefer drafts on this city or New York to either of the above, if to be had at ¼ or ½ p. ct. premium.

We quote London 9¾ or 10 p. ct., Paris 5 20 or 5 22½.

Yours respectfully,

R. & I. PHILLIPS.

We think you can at all times do better with drafts on us than paper. We have abundance of the latter on hand.

No. 58.

Cert. of naturalization.

Be it remembered, that at the district court for the City and County of Philadelphia, held at the City of Philadelphia, in the Commonwealth of Pennsylvania, in the United States of America, on the sixth day of April, in the year of our Lord one thousand eight hundred and thirty, Isaac Phillips, a native of England, exhibited a petition, praying to be admitted to become a citizen of the United States; and it appearing to the said court, that he had declared on oath before the open district court for the City and County of Philadelphia, on the sixth day of December, A. D. 1821, that it was bona fide his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty whatsoever, and particularly to the king of the United Kingdom of Great Britain and Ireland, of whom he was at that time a subject; and the said Isaac Phillips having on his solemn oath declared, and also made proof thereof agreeably to law, that he had resided one year and upwards within the State of Pennsylvania, and within the United States of America upwards of five years immediately preceding his application; and it appearing to the satisfaction of the court, that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same; and having declared on his solemn oath before the said court, that he would support the Constitution of the United States, and that he did absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state and sovereignity whatever, and particularly to the king of the United Kingdom of Great Britain and Ireland, of whom he was before a subject; and having in all respects complied with the laws in regard to naturalization, the court thereupon admitted the

said Isaac Phillips to become a citizen of the United States, and ordered all the proceedings aforesaid to be recorded by the prothonotary of the said court, which was done accordingly.

In witness whereof, I have hereunto affixed the seal of the said court, at Philadelphia, this sixth day of April, [L. S.] in the year of our Lord one thousand eight hundred and thirty, and of the sovereignty and independence of the United States of America, the fifty-*five*.

JOHN LISLE,
Prothonotary of the District Court for the City and County of Philadelphia.

No. 56.

Letter from J. R. Welsh, to C. Fallon, No. 2.

SIR,—Owing to an accident which occurred upon the rail road yesterday, I did not reach the city until 8 o'clock last evening, which prevented the transaction of some business I had on hand, and which it is imperatively necessary I should do to-day; as this will prevent my attendance at your office, at the time mentioned in your note, I herewith return the check for $10, handed me for expenses.

Respectfully, &c.
J. R. WELSH.

Monday morning, Nov. 2.

(Referred to in Welsh's testimony, No. 35.)

No. 61.

Exemplification of record, Moss vs. Moss.

CITY AND COUNTY OF PHILADELPHIA, *ss.*

Pleas at Philadelphia, before the Honourable Thomas M. Pettit, president, George M. Stroud and Joel Jones, Esquires, judges of the District Court for the city and County of Philadelphia, of the term of March, in the year eighteen hundred and thirty-seven.—

No. 51.—(D. S. B.) It is thus contained.

JOHN MOSS,
vs.
JOSEPH L. MOSS.

Judgment entered on bond and warrant of att'y, dated March

24th, 1837, for $48,000, conditioned for the payment of $24,600, on demand.

And now on the twenty-seventh day of March, A. D. 1837, a warrant of attorney is filed in our said court, in the words following, to wit:

To Thomas Dunlap, Esq., attorney of the Court of Common Pleas at Philadelphia, in the County of Philadelphia, in the State of Pennsylvania, or to any other attorney of said court, or of any other court elsewhere.

Whereas I, Joseph L. Moss, of the city of Philadelphia, merchant, by a certain obligation bearing even date herewith, do stand bound unto John Moss of the same city, merchant, in the sum of forty-eight thousand dollars, lawful money of the United States of America, conditioned for the payment of twenty-four thousand six hundred dollars, lawful money aforesaid, on demand, with lawful interest from the date thereof:

These are to desire and authorize you, or any of you, to appear for me in the said court, or elsewhere, in an action of debt there or elsewhere brought or to be brought against me at the suit of *of* the said John Moss, his heirs, executors, administrators or assigns, on the said obligation, as of the last, next, or any other subsequent term then or elsewhere to be held, and confess judgment thereon against me, for the said sum of forty-eight thousand dollars, lawful money of the United States, besides costs of suit by cognovit actionem, or otherwise, as to you shall seem meet; and for you or any of you so doing, this shall be your sufficient warrant. And I do hereby for myself, my heirs, executors and administrators, remise, release and for ever quit claim unto the said John Moss, his heirs, executors, administrators and assigns, all and all manner of error and errors, misprisions, misentries, defects and imperfections whatever, in the entering of the said judgment, or any process or proceedings thereon or thereto, or any wise touching or concerning the same.

In witness whereof, I have hereunto set my hand and seal, the twenty-fourth day of March, in the year of our Lord one thousand eight hundred and thirty-seven.

JOSEPH L. MOSS, [L. S.]

Sealed and delivered in the presence of us,
J. MORA MOSS,
CH. CHAUNCEY.

And now on the twenty-seventh day of March, A. D. 1837, it was in such manner proceeded in our said court, that the said plaintiff John Moss, do recover against the said defendant, Joseph L. Moss, the sum of forty-eight thousand dollars; and also the further sum of five dollars and fifty cents, for his costs and charges, by him about his suit in that behalf expended; making together the sum

of forty-eight thousand and five dollars and fifty cents; and the said Joseph L. Moss, in mercy, &c.

And now, on the nineteenth day of March, A. D. 1838, a precept of the Commonwealth of Pennsylvania, (commonly called a Fi. Fa.) is issued out of our said court in the words following, to wit:

CITY AND COUNTY OF PHILADELPHIA, *ss.*

The Commonwealth of Pennsylvania, to the Sheriff of Philadelphia County, greeting:

We command you, that of the goods and chattels, lands and tenements of Joseph L. Moss, in your bailiwick, you cause to be levied as well a certain debt of forty-eight thousand dollars lawful money of Pennsylvania, which John Moss, lately in our District Court for the city and County of Philadelphia, before our judges at Philadelphia, recovered against him; as also five dollars and sixty-two and a half cents, which to the said John Moss, in our said court were adjudged for his damages, which he sustained by occasion of the detention of that debt, whereof the said Joseph L. is convict, as appears of record, &c.; and have you that money before our judges at Philadelphia, at our said court, there to be held the first Monday of April next, to render to the said John, for his debt and damages aforesaid; and have you there then this writ.

Witness the Honourable Thomas M. Pettit, president of our said court, at Philadelphia, the nineteenth day of March, in the year of our Lord one thousand eight hundred and thirty-eight.

Pro F. COMLY, *Prothonotary*,
M. COATS.

The said writ was endorsed as follows, to wit:

JOHN MOSS, *vs.* JOSEPH L. MOSS.

March, 1838.—No. 324.—Fi. Fa.

Real debt.

Int. from 27 March, '37,	
Att'y and costs, - - - - -	$4 12½
Cr. - - - - - - -	12½
Proth'y - - - - - -	1 37
Fi. Fa. - - - - - -	50

The Sheriff makes return to said writ in the words following, to wit:

Levied on the real estate of defendant, as described in a schedule annexed to fi. fa., No. 222; and the residue of the execution of this writ appears by reference to a certain schedule or inquisition hereto annexed. So answers

JN. G. WATMOUGH, *Shff.*

The inquisition annexed to the sheriff's return is in the following words, to wit:

Inquisition, indented and taken at Philadelphia, the day of , in the year of our Lord one thousand eight hundred and thirty , before Esquire, High Sheriff of the city and county of Philadelphia. By virtue of a writ of the Commonwealth of Pennsylvania, to me directed, and to this inquisition annexed by oaths and affirmations, the jurors, whose names and seals are hereunto annexed, good and lawful men of the county aforesaid, respectively do say, that the rents, issues, and profits of the within described property, by me, the said sheriff, taken in execution by virtue of the said writ, wherein is plaintiff, and defendant, are not of a clear value beyond all reprises, sufficient, within the space of seven years, to satisfy the debt and damages in the writ aforesaid mentioned.

In testimony whereof, as well I, the said sheriff, as the inquests aforesaid to this inquisition, have interchangeably set our hands and seals, the day and year first above written.

JN. G. WATMOUGH, *Shff.*	[S. D.]
J. ROACH,	[L. S.]
AND'W DONALDSON,	[L. S.]
JESSE WILLIAMSON,	[L. S.]
LODEWYK SHARPE,	[L. S.]
WILLIAM LEHMAN,	[L. S.]
W. WIRT,	[L. S.]
C. STEVENSON,	[L. S.]
C. F. HOECKLEY,	[L. S.]
GEORGE BASTIAN,	[L. S.]
R. E. GRAY,	[L. S.]
ISAAC MEYER,	[L. S.]
CHARLES ROBB,	[L. S.]
GEO. W. SOUTH.	[L. S.]

And now, on the eleventh day of April, A. D. 1838, a venditioni exponas is issued out of our said court, in the words following, to wit:

CITY AND COUNTY OF PHILADELPHIA, *ss:*

The Commonwealth of Pennsylvania to the Sheriff of Philadelphia County, greeting:

Whereas, by our writ of fieri facias, we lately commanded you,

that of the goods and chattels, lands and tenements, of Joseph L. Moss, late of your county, in your bailiwick, you cause to be levied as well a certain debt of forty-eight thousand dollars, lawful money of Pennsylvania, which John Moss, lately in our district court for the city and county of Philadelphia, before our judges at Philadelphia, recovered against him, as also five dollars sixty-two and a half cents, which to the said John in our said court were adjudged for his damages, which he sustained by occasion of the detention of that debt, whereof the said Joseph L. is convict, as appears of record, &c.; and that you should have that money before our judges at Philadelphia, at our said court, there to be held the first Monday of April then next, to render to the said John for his debt and damages aforesaid; and that you should have then there that, our said writ.

And whereas, you, the same day, before our said judges, returned, that by virtue of another writ of fi. fa. to March term, 1838, No. 222, to you directed, you had seized and taken in execution *all the right, title, and interest of Isaac Phillips*, in all that four story brick messuage or tenement, and all those three lots or pieces of ground hereinafter described, to wit: All that certain lot or piece of ground situate on the south side of Arch or Mulberry street, at the distance of 120 feet west from the west side of Thirteenth street, in the city of Philadelphia, containing in front, on said Arch street, twenty-two feet, and in length or depth extending southward one hundred and thirty-seven feet to twenty feet wide street, called Paper alley; bounded east by a lot of ground granted by William Sansom et ux. to Wm. Johnson on ground rent; south, by the said Paper alley; west, by the next described lot of ground; and north, by Mulberry street aforesaid.

Also, all that certain lot or piece of ground situate on the south side of said Mulberry street, at the distance of one hundred and forty-two feet west from the west side of the said Thirteenth street, containing, in front or breadth on Mulberry street, twenty-two feet, and in length or depth extending south one hundred and thirty-seven feet to said Paper alley; bounded east by the above described lot of ground; south, by the said Paper alley; west, by the next hereinafter described lot of ground; north, by said Mulberry street. And also, all that certain lot or piece of ground situate on the south side of Mulberry street, at the distance of one hundred and sixty-four feet west from the west side of Thirteenth street, containing, in front or breadth on said Mulberry street, twenty-two feet, and in length or depth southward to Paper alley, one hundred and thirty-seven feet; bounded eastward by the last above described lot of ground; south, by the said Paper alley; west, by a lot of ground granted by the said William Sansom et ux. to Joseph Donaldson on ground rent; and north, by Mulberry street aforesaid; together with all and singular the improvements, buildings, ways, streets, alleys, waters, water-courses, passages, rights, liber-

ties, privileges, hereditaments and appurtenances whatsoever, unto the said premises belonging, or in anywise appertaining. Each of the said described lots of ground, subject to the yearly rent or sum of $231 each, payable half-yearly on the twenty-third day of October and April, unto William Sansom, his heirs and assigns, without any defalcation for taxes. Also, all the right, title, and interest of Isaac Philips, in all that certain lot or piece of ground situate on the north side of Chestnut street, at the distance of 42 feet west from the west side of Schuylkill Seventh street, in the city of Philadelphia, containing, in front or breadth, on Chestnut street, sixty-six feet, and extending, in length or depth, northward one hundred and fifty-eight feet, to a certain 20 feet wide street, called Linden street; (being the same premises which George A. Thompson and Rebecca, his wife, granted unto the said Isaac Philips in fee, by indenture dated 9th June, 1835, and duly recorded;) bounded east and west by ground granted to William B. Fling on ground rent; north, by said Linden street; and south, by Chestnut street. Together with all rights, remedies, and incidents thereunto belonging or in anywise appertaining. (Recorded in Deed Book A. M., No. 65, page 538.) Also, all the right, title, and interest of Isaac Philips to all that certain lot or piece of ground situate on the westerly side of South Sixth street, and between High and Chestnut streets, in the city of Philadelphia, containing in breadth, on the said Sixth street, 25 feet more or less; and of that breadth, extending in length or depth westward to Decatur street, 175 feet, more or less, with the appurtenances. On the premises is erected a 4 story substantial brick messuage, extending the entire depth of the lot from 6th to Decatur street, narrowing in the centre so as to leave a small side yard. It is nearly new, is well built, and is replete with every convenience for an extensive hotel.

Also, all the right, title, and interest of Isaac Philips to all that certain messuage, tenement, and warehouse, and lot or piece of ground thereunto belonging, situate on the east side of Delaware Front street, between Walnut and Spruce streets, in the city of Philadelphia, containing in front or breadth on the said Front st., 19 feet, more or less, and extending in length or depth, from the said Front street to Water street, about 41 feet; bounded north by a messuage and lot of ground of John M'Cauley; east, by Water street; south, by the middle line of the partition wall between this messuage and the next adjoining messuage to the south, conveyed by Benj. B. Howell et ux. to Dr. James Dunlap; and west, by Front st. aforesaid; (being the same premises which Wm. M. Biddle, surviving assignee of the estate of Henry Sergeant, by indenture dated 24th Nov., 1824, granted to John Sergeant, Esq., in fee;) together with the free and common use and privilege of a five feet alley, extending from the said Front street to Water street adjoining, and to the southward of the messuage or lot conveyed by the said Benj. B. Howell et ux. to the said James Dunlap. Together

with all and singular the buildings, improvements, ways, waters, water-courses, rights, liberties, privileges, hereditaments, and appurtenances, whatsoever thereunto belonging, or in anywise appertaining. Recorded in Deed Book G. W. R., No. 10, p. 123.

Also, all the right, title, and interest of Joseph L. Moss in all that certain three story brick messuage or tenement and lot or piece of ground thereunto belonging, situate on the south side of Walnut street, at the distance of 20 ft. eastward of Juniper street, in the city of Philadelphia, containing in front or breadth on Walnut street, 21 feet, and in length or depth southward, 170 feet to a thirty feet wide alley, lately laid out and opened, leading from the said Juniper street to Thirteenth street; bounded north by said Walnut street; east by a messuage or lot of ground granted by Peter Fritz et ux. to Rowland Stevenson; south by the above mentioned thirty-feet wide alley; and west partly by a messuage and lot of ground lately granted by Joseph L. Moss et ux. to Sarah Maccoun, and partly by the lot of ground next hereinafter described.

All that certain piece of ground situate on the north side of the said 30 feet wide alley, and east side of Juniper street, in the said city of Philadelphia, containing in breadth, east and west, 21 feet, and in length or depth, north and south, 59 feet 3 inches; bounded on the north by the above mentioned lot of ground lately granted by Joseph L. Moss et ux. to Sarah Maccoun; east by the lot of ground first herein described; south by the aforesaid 30 feet wide alley; and west by Juniper aforesaid. Being the same premises which Joseph L. Moss et ux., by indenture dated 20th March, 1837, recorded in Deed Book S. H. F., No. 8, page 654, granted to David Samuels in fee, subject, with respect to the lot of ground last described, to a certain covenant restraining the erection of buildings thereon, contained in a certain indenture from the said J. L. Moss et ux. to the said Sarah Maccoun, dated 21st Nov., 1836. Recorded in Deed Book S. H. F., No. 10, p. 297. Together with the common use and privilege of the said 30 feet wide street, with or without horses, cattle, carriages, at all times hereafter, forever; and together with all and singular the buildings, improvements, ways, streets, alleys, passages, waters, water-courses, rights, liberties, privileges, hereditaments, and appurtenances, whatsoever thereunto belonging, or in anywise appertaining, &c., which remained in your hands unsold for want of buyers, and therefore you could not have the money, in our said writ mentioned, at the day and place in our said writ specified, as therein you were commanded, and that the residue of the execution of our said writ appeared in a certain schedule or inquisition thereto annexed. By which schedule or inquisition, it was found that the rents, issues, and profits of the above described property, in your said return, upon our said writ thereunto annexed, mentioned, are not of a clear yearly value beyond all reprizes, sufficient, within the space of seven years, to

satisfy the debt and damages in our said writ mentioned. Therefore, we command you, that the premises aforesaid, with the appurtenances, you expose to sale, and have you that money before our judges at Philadelphia at our said court, there to be held the first Monday of May next, to render to the said John Moss for his debt and damages aforesaid; and have you then there this writ.

Witness the Honourable Thomas M. Pettit, President of our said court, at Philadelphia, the 11th day of April, in the year of our Lord one thousand eight hundred and thirty-eight.

Pro F. COMLY, *Prothonotary.*
M. COATS.

And now, the fifth day of May, A. D. 1838, the court grant a rule to show cause why the sheriff's sale should not be set aside; and on the eighth day of May, A. D. 1838, affidavit of Ed. Waln, filed in the words following, to wit:

Ed. Waln, being duly affirmed according to law, declares and says, that the requisites of the act of assembly regulating proceedings under execution, have not been complied with at the sheriff's sale of the property of Mr. Joseph L. Moss, either by affixing a handbill upon the premises ten days before the sale, or by advertisement in at least two newspapers once a week, during three successive weeks before the sale, to the best of his knowledge and belief.

ED. WALN.

Affirmed to before me, the 8th May, 1838.
S. BADGER.

And now, May twelfth, A. D. 1838, rule absolute, sale set aside.

And now, May twelfth, A. D. 1838, the sheriff makes return to the aforesaid writ of venditioni exponas, in the words following, to wit:

May 12th, 1838, sale of the within described premises set aside by order of court.

So answers, JN. G. WATMOUGH, *Shff.*

And now, on the twelfth day of May, A. D. 1838, an alias venditioni exponas is issued out of our said court in the words following, to wit:

CITY AND COUNTY OF PHILADELPHIA, *ss:*

The Commonwealth of Pennsylvania to the Sheriff of Philadelphia county, greeting:

Whereas, by our writ of fieri facias, we lately commanded you, that of the goods and chattles, lands and tenements of Joseph L. Moss,

late of your county, in your bailiwick, you should cause to be levied as well a certain debt of twenty-four thousand dollars lawful money of Pennsylvania, which John Moss, lately in our District Court for the city and county of Philadelphia, before our judges at Philadelphia, recovered against the said Joseph L. Moss, as also five dollars sixty-two cents, which to the said John in our said court were adjudged for his damages, which he sustained by occasion of the detention of that debt, whereof the said Joseph is convict, as appears of record, &c., and that you should have that money before our judges at Philadelphia, at our said court, there to be held the first Monday of April, then next, to render to the said John for his debt and damage aforesaid; and that you should have then there that, our said writ. And whereas, you the same day before our said judges returned, that by virtue of our said writ to you directed, you had seized and taken in execution,

No. 1. *All the right, title and interest of Joseph L. Moss*, in all that certain three story brick messuage or tenement, or lot or piece of ground, situate on the south side of Walnut street, at the distance of twenty feet eastward of Juniper street, in the city of Philadelphia, containing in front or breadth on Walnut street, twenty-one feet, and in length or depth southward, one hundred and seventy feet, to a thirty feet wide alley, lately laid out and opened, leading from the said Juniper street to Thirteenth street: bounded north by said Walnut street, east by a messuage or lot of ground granted by Peter Fritz, et ux., to Rowland Stevenson; south by the above mentioned 30 feet wide alley, and west partly by a messuage and lot of ground lately granted by Joseph L. Moss, et ux., to Sarah Maccoun, and partly by a lot of ground hereinafter described.

No. 2. All that certain piece of ground, situate on the north side of said thirty feet wide street, and east of Juniper street, in the said city of Philadelphia: containing in breadth, east and west, twenty-one feet; and in length or depth, north and south, 59 feet 3 inches; bounded on the north by the above mentioned lot of ground, lately granted by Joseph L. Moss, et ux., to Sarah Maccoun; east, by the lot of ground first herein described; south, by the aforesaid 30 feet wide alley; and west, by Juniper street aforesaid: being the same premises which Joseph L. Moss, et ux., by indenture, dated 20th March, 1837, recorded in deed-book S. H. F., No. 8, page 654, &c., granted to David Samuel, in fee, subject to a certain covenant, restraining the erection of buildings thereon, contained in a certain indenture from said J. L. Moss, et ux., to the said Sarah Maccoun, dated 21st Nov., 1836, recorded in deed-book S. H. F., No. 10, p. 297: together with the common use and privilege of said thirty feet wide street, with or without horses, cattle, carriages, at all times hereafter, forever; and together with all and singular the buildings, improvements, ways, streets, alleys, passages, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging,

or in any wise appertaining, &c., which remained in your hands unsold for want of buyers, and therefore you could not have the money, in our said writ mentioned, at the day and place in our said writ specified, as therein you were commanded, and that the residue of the execution of our said writ appeared in a certain schedule or inquisition thereunto annexed: by which schedule or inquisition it was found, that the rents, issues, and profits of the above described property in your said return upon our said writ thereunto annexed, mentioned, are not of a clear yearly value beyond all reprizes, sufficient within the space of seven years to satisfy the debt and damages in our said writ mentioned.

Therefore, we command you, as before we did, that the premises aforesaid, with the appurtenances, you expose to sale; and have you that money before our judges, at Philadelphia, at our said court, there to be held the first Monday of June next, to render to the said John, for his debt and damages aforesaid; and have you there this writ.

Witness, the Honorable Thomas M. Pettit, Esquire, President of our said court, at Philadelphia, the twelfth day of May, in the year of our Lord one thousand eight hundred and thirty-eight.

Pro F. COMLY, *Prothonotary.*
M. COATS.

The aforesaid writ was endorsed as follows:

JOHN MOSS
vs.
JOSEPH L. MOSS. } June Term, 1838.—78.

Al's Venditioni Exponas.

Real debt, - - - - - - - -	$24,000
Int. from March 27th, 1837.	
Att'y et entry, - - - - - - -	$4 12½
Cr. - - - - - - - - -	12½
Prot. - - - - - - - - -	1 37½
Fi. Fa. - - - - - - - - -	50
Vend. Exp. - - - - - - - -	75
Alias Vend. Exp. - - - - - - -	75

The Sheriff makes return to the aforesaid writ in the words following, to wit:

To the Judges within named.

I do hereby certify, that after having due and legal notice of the time and place of sale of the within described premises, by advertisements in the public newspapers, and in handbills set up in the most public places in my bailiwick, did, on Monday, the fourth day

of June, at 7½ o'clock in the evening, at the county court-room, expose the within described premises to sale, by public vendue or outcry, when John Moss, of the city of Philadelphia, merchant, bought all the right, title, and interest of Joseph L. Moss in the first within described premises, for the price or sum of one hundred dollars; and all the second within described premises, for the price or sum of fifty dollars; making, together, the sum of one hundred and fifty dollars—he being the highest and best bidder, and those the highest and best prices bidden for the same: which said sum of money I have here ready to render, as I am within commanded.

So answers JN. G. WATMOUGH, *Sh'ff.*

PHILADELPHIA CITY AND COUNTY, *ss:*

I, Wm. V. Pettit, Esquire, prothonotary of the district court for the city and county of Philadelphia, do certify that the foregoing is a true copy of the record in the case there stated. Four blanks, marked 1, 2, 3, 4, on page 4; and two blanks, marked 1, 2,—all marked W. V. P. in the margin.

In testimony whereof, I have hereunto set my hand, and affixed [L. S.] the seal of the said court, the first day of June, eighteen hundred and thirty-nine.

WM. V. PETTIT, *Prothonotary.*

PHILADELPHIA CITY AND COUNTY, *ss:*

I, Thomas M. Pettit, Esq., President of the District Court for the city and county of Philadelphia, do certify that the foregoing record and attestation, made by Wm. V. Pettit, Esquire, prothonotary of said court, whose name is thereto subscribed, and seal of office affixed, are in due form, and made by the proper officer.

In testimony whereof, I have hereunto set my hand, the first day of June, eighteen hundred and thirty-nine.

T. M. PETTIT.

PHILADELPHIA CITY AND COUNTY, *ss:*

I, Wm. V. Pettit, Esquire, prothonotary of the district court for the city and county of Philadelphia, do certify that the honorable Thomas M. Pettit, Esquire, by whom the foregoing attestation is made, whose name is thereto subscribed, was at the time of making thereof, and still is, president judge of the district court for the city and county of Philadelphia, duly commissioned and sworn, to all whose acts, as such, full faith and credit is, and ought to be given, as well in courts of justice as elsewhere.

In testimony whereof, I have hereunto set my hand, and affixed the seal of the said court, the first day of June, eighteen hundred and thirty-nine. [L. S.]

WM. V. PETTIT, *Prothonotary.*

No. 64.

Edward Yarnall, et ux., to Sarah Moss Phillips.

This indenture, made the twenty-ninth day of August, in the year of our Lord one thousand eight hundred and thirty-four, between Edward Yarnall, of the city of Philadelphia, druggist, and Caroline R., his wife, of the one part, and Sarah Moss Phillips, wife of Isaac Phillips, of the city of Philadelphia, merchant, of the other part: witnesseth, that the said Edward Yarnall and Caroline R., his wife, for and in consideration of the sum of four hundred dollars, lawful silver money of the United States of America, unto them well and truly paid by the said Sarah Moss Phillips, at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released and confirmed, and by these presents do grant, bargain, sell, release and confirm, unto the said Sarah Moss Phillips, her heirs and assigns, all that certain lot or piece of ground, situate on the south side of Mulberry street, at the distance of one hundred and forty-two feet westward from the west side of Delaware Thirteenth street, in the said city, containing in front, or breadth, on the said Mulberry street, twenty-two feet, and in length or depth, extending southward, one hundred and thirty-seven feet, to a twenty feet wide alley, called "Paper Alley:" Bounded on the east by a lot of ground granted by William Sansom and wife to Benjamin H. Yarnall, on ground rent; on the south by the said Paper Alley; on the west by a lot of ground granted by the said William Sansom and wife, to Charles Yarnall, on ground rent; and on the north by Mulberry street aforesaid, (being the same lot of ground which William Sansom,—by his attorney, George Vaux, Esquire,—and Susanna, his wife, by indenture, dated the twenty-third day of April, anno Domini one thousand eight hundred and thirty-three, recorded, at Philadelphia, in deed-book A. M, No. 37, page 164, &c., granted and conveyed unto the said Edward Yarnall, in fee, reserving thereout unto the said William Sansom, his heirs and assigns, the yearly rent or sum of two hundred and thirty-one silver milled dollars, lawful money aforesaid, in half yearly payments, on the twenty-third day of the months of October and April, in every year, forever, without any deduction for taxes, &c., as therein particularly expressed,)—together, also, with all and singular, the improvements, ways, streets, alleys, passages, water, water-courses, rights, liberties, privileges, hereditaments, and appurtenances whatsoever, thereunto belonging, or in any wise ap-

pertaining; and the reversions and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, claim and demand whatsoever, of them, or either of them, the said Edward Yarnall and Caroline R., his wife, of, in and to the same: to have and to hold the said lot or piece of ground above described, hereditaments and premises hereby granted or mentioned, and intended so to be, with the appurtenances, unto the said Sarah Moss Phillips, her heirs and assigns, to and for the only proper use and behoof of the said Sarah Moss Phillips, her heirs and assigns, forever,—under and subject, nevertheless, to the payment of the above mentioned yearly rent charge, or sum of two hundred and thirty-one dollars, such as above said, so as the same shall accrue and grow due and payable, from and after the twenty-third day of October next ensuing the date hereof, unto the said William Sansom, his heirs and assigns, without deduction for taxes, as above specified: and the said Edward Yarnall, and his heirs, the said hereby granted premises above described, with the appurtenances, (subject as aforesaid,) unto the said Sarah Moss Phillips, her heirs and assigns, against him the said Edward Yarnall and his heirs, and against all and every other person and persons, whomsoever, lawfully claiming or to claim the same, or any part thereof, by, from, or under him, them, or any of them, shall and will warrant, and forever defend, by these presents.

In witness whereof, the said parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.

EDWARD YARNALL, [L. S.]
CAROLINE R. YARNALL. [L. S.]

Sealed and delivered in the
presence of us,
HENRY COPE,
THOS. B. DRINKER.

Received, the day of the date of the above written indenture, of the above named Sarah Moss Phillips, the sum of four hundred dollars, such as above said, being the full consideration money above mentioned.

EDW. YARNALL.

Witnesses at signing,
HENRY COPE,
THOS. B. DRINKER.

The twenty-ninth day of August, anno Domini 1834, before me, the subscriber, one of the Aldermen of the city of Philadelphia, personally appeared the above named Edward Yarnall and Caroline R., his wife, and acknowledged the above written indenture to be their act and deed, and desired the same as such might be recorded according to law; the said Caroline R. being of full age,

by me, separate and apart from her said husband, examined, and the contents of the said indenture being made known unto her, did declare that she did voluntarily, and of her own free will and accord, seal, and as her act and deed, deliver the said indenture, without any compulsion or coercion of her said husband. Witness my hand and seal, the day and year aforesaid.

WILLIAM MILNOR, *Ald.* [L. S.]

Endorsed on the above.

Recorded, in the office for recording deeds, &c. for the city and county of Philadelphia, in deed book S. H. F., No. 11, page 485, &c.

Witness my hand and seal of office, this 23d day of March, 1837.

[L. S.] SAMUEL H. FISHER, *Recorder.*

No. 65.

Edward Yarnall to Sarah Moss Phillips.

This Indenture, made the twenty-ninth day of August, in the year of our Lord, one thousand eight hundred and thirty-four, between Charles Yarnall, of the city of Philadelphia, druggist, of the one part, and Sarah Moss Phillips, wife of Isaac Phillips, of the said city, merchant, of the other part, witnesseth: that the said Charles Yarnall, for, and in consideration of the sum of four hundred dollars, lawful silver money of the United States of America, unto him well and truly paid, by the said Sarah Moss Phillips, at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, released and confirmed, and by these presents doth grant, bargain, sell, release, and confirm, unto the said Sarah Moss Phillips, her heirs and assigns, all that certain lot or piece of ground situate on the south side of Mulberry street, at the distance of one hundred and sixty-four feet westward from the west side of Delaware Thirteenth street, in the said city of Philadelphia, containing, in front or breadth, on the said Mulberry street, twenty-two feet; and in length or depth, southward, one hundred and thirty-seven feet, to a twenty feet wide alley, called "Paper alley;" bounded on the east by a lot of ground granted by William Sansom and wife to Edward Yarnall, on ground rent; on the south by the said Paper alley; on the west, by a lot of ground granted by the said William Sansom and wife to Joseph Donalson, on ground rent; and on the north, by Mulberry street aforesaid, (being the same lot of ground which William Sansom by his attorney, George Vane, Esq. and Susannah, his wife, by indenture dated the twenty-third day of April, anno Domini one thousand eight hundred and thirty-three, recorded at Philadelphia in deed book A. M., No. 37, page 168, &c., granted and conveyed unto the said Charles Yarnall, in fee, reserving thereout unto the said William Sansom, his heirs and assigns, the yearly

rent or sum of two hundred and thirty-one silver milled dollars, lawful money aforesaid, in half yearly payments, on the twenty-third day of the months of October and April in every year, forever, without any deduction for or on account of any taxes, &c., as therein particularly expressed;) together, also, with all and singular the improvements, ways, streets, alleys, passages, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever, thereunto belonging, or in any wise appertaining; and the reversions and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim, and demand, whatsoever, of him, the said Charles Yarnall, of, in and to the same; to have and to hold the said lot or piece of ground above described, hereditaments and premises hereby granted or mentioned and intended so to be, with the appurtenances, unto the said Sarah Moss Phillips, her heirs and assigns, to the only proper use and behoof of the said Sarah Moss Phillips, her heirs and assigns, forever; under and subject, nevertheless, to the payment of the above mentioned yearly rent charge, or sum of two hundred and thirty-one dollars, such as above said, so as the same shall accrue, and grow due, and payable from and after the 23d day of October next ensuing the date hereof, without any deduction for taxes, unto the said Wm. Sansom, his heirs and assigns, as above specified. And the said Charles Yarnall, and his heirs, the said described lot of ground hereby granted, with the appurtenances (subject as aforesaid) unto the said Sarah Moss Phillips, her heirs and assigns, against him, the said Charles Yarnall and his heirs, and against all and every other person and persons whomsoever, lawfully claiming or to claim the same, or any part thereof, by, from or under him, them, or any of them, shall and will warrant and forever defend by these presents.

In witness whereof, the said parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.

CHARLES YARNALL. [L. S.]

Sealed and delivered in presence of us,
SIMEON MASON,
WILLIAM MILNOR.

Received, the day of the date of the above written indenture, of the above named Sarah Moss Phillips, the sum of four hundred dollars, such as above said, being the full consideration money above mentioned.

CHARLES YARNALL.

Witnesses at signing,
SIMEON MASON,
WILLIAM MILNOR.

The second day of September, anno Domini 1834, before me,

the subscriber, one of the Aldermen of the city of Philadelphia, personally appeared the above named Charles Yarnall, and acknowledged the above written indenture to be his act and deed, and desired the same, as such, might be recorded according to law.

Witness my hand and seal, the day and year aforesaid.

WILLIAM MILNOR, *Ald.* [L. S.]

Endorsed on the above.

Recorded in the office for recording deeds, &c. for the city and county of Philadelphia, in deed book S. H. F., No. 11, page 484, &c.

Witness my hand and seal of office, this 23d day of March, 1837.

[L. S.]

SAMUEL H. FISHER, *Recorder.*

No. 66.

Deed—Benj. H. Yarnall and wife, to Sarah Moss Phillips.

This indenture, made the twenty-ninth day of August, in the year of our Lord one thousand eight hundred and thirty-four, between Benjamin H. Yarnall, of the city of Philadelphia, hardware merchant, and Elizabeth C., his wife, of the one part, and Sarah Moss Phillips, wife of Isaac Phillips, of the said city of Philadelphia, merchant, of the other part, witnesseth: that the said Benj. H. Yarnall, and Elizabeth C., his wife, for and in consideration of the sum of four hundred dollars, lawful silver money of the United States of America, unto them well and truly paid by the said Sarah Moss Phillips, at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released and confirmed, and by these presents, do grant, bargain, sell, release, and confirm unto the said Sarah Moss Phillips, her heirs and assigns, all that certain lot or piece of ground situate on the south side of Mulberry street, at the distance of one hundred and twenty feet westward from the west side of Delaware 13th street, in the said city, containing in front or breadth on the said Mulberry street, twenty-two feet, and in length or depth extending southward one hundred and thirty-seven feet, to a twenty feet wide alley, called "Paper Alley;" bounded on the east by a lot of ground granted by William Sansom and wife to William Johns, on ground rent; on the south by the said Paper Alley; on the west by a lot of ground granted by the said William Sansom and wife to Edward Yarnall, on ground rent; and on the north by Mulberry street aforesaid, (being the same lot of ground which William Sansom, by his attorney, George Vaux, Esquire, and Susannah, his wife, by indenture dated the twenty-third day of April, anno Domini one thousand eight hundred and thirty-three, (recorded at Philadelphia, in Deed Book A. M., No. 36, page 212, &c.,)

granted and conveyed unto the said Benjamin H. Yarnall, in fee, reserving thereout unto the said William Sansom, his heirs and assigns, the yearly rent or sum of two hundred and thirty-one silver milled dollars, lawful money aforesaid, in half yearly payments, on the twenty-third day of the months of October and April, in every year, forever, without any deduction for taxes, &c., as therein particularly expressed. Together, also, with all and singular the improvements, ways, streets, alleys, passages, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever, thereunto belonging or in anywise appertaining; and the reversions and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, property, claim and demand whatsoever, of them or either of them, the said Benjamin H. Yarnall, and Elizabeth C., his wife, of, in, and to the same: to have and to hold the said lot or piece of ground hereinabove described, hereditaments and premises hereby granted, or mentioned, and intended so to be, with the appurtenances, unto the said Sarah Moss Phillips, her heirs and assigns, to and for the only proper use and behoof of the said Sarah Moss Phillips, her heirs and assigns, forever, under and subject, nevertheless, to the payment of the above mentioned yearly rent charge, or sum of two hundred and thirty-one dollars, such as above said, so as the same shall accrue and grow due and payable, from and after the twenty-third day of October next ensuing the date hereof, without any deduction for taxes, unto the said William Sansom, his heirs and assigns, as above specified. And the said Benjamin H. Yarnall, and his heirs, the said hereby granted lot of ground above described, with the appurtenances (subject as aforesaid), unto the said Sarah Moss Phillips, her heirs and assigns, against him the said Benjamin H. Yarnall, and his heirs, and against all and every other person and persons whomsoever, lawfully claiming or to claim the same or any part thereof, by, from, or under him, them, or any of them, shall and will warrant and forever defend, by these presents.

In witness whereof, the said parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.

B. H. YARNALL, [L. S.]
ELIZABETH C. YARNALL. [L. S.]

Sealed and delivered in the presence of us,
P. CHRISTIAN,
ALEX. CUNNINGHAM.

Received the day of the date of the above written indenture, of the above named Sarah Moss Phillips, the sum of four hundred

dollars, such as above said, being the full consideration above specified.

B. H. YARNALL.

Witnesses at signing,
P. CHRISTIAN,
ALEX. CUNNINGHAM.

The second day of September, anno Domini 1834, before me, the subscriber, one of the aldermen of the city of Philadelphia, personally appeared the above named Benjamin H. Yarnall, and Elizabeth C., his wife, and acknowledged the above written indenture to be their act and deed, and desired the same as such might be recorded according to law; the said Elizabeth C. being of full age, and by me separate and apart from her said husband examined, and the contents of the said indenture being made known unto her, did declare that she did voluntarily and of her own free will and accord, seal, and as her act and deed deliver the said indenture, without any compulsion or coercion of her said husband.

Witness my hand and seal, the day and year aforesaid.

P. CHRISTIAN. [L. S.]

Recorded in the office for recording of deeds, &c., for the city and county of Philadelphia, in deed book S. H. F., No. 11, page 487, &c.

Witness my hand and seal of office, this twenty-third day of March, 1837.

SAMUEL H. FISHER, [L. S.]
Recorder.

No. 67.

Isaac Phillips to John Moss.

This Indenture, made the tenth day of April, in the year of our Lord one thousand eight*een* hundred and thirty-seven, between Isaac Phillips, of the city of Philadelphia, merchant, of the one part, and John Moss, of said city, merchant, of the other part, witnesseth: that the said Isaac Phillips, for and in consideration of the sum of seven thousand one hundred and two dollars seventeen cents, lawful money, to him paid by the said John Moss at the time of the execution hereof, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, released and confirmed, and by these presents doth grant, bargain, sell, release and confirm, unto the said John Moss, his heirs and assigns, all the estate, right, title, interest, property, claim and demand whatsoever, in law or equity, now of him, the said Isaac Phillips, or to which he might be entitled as tenant, by the courtesy of, in and to

all that four story brick messuage or tenement, and all those three lots or pieces of ground hereinafter described, to wit: all that certain lot or piece of ground, situate on the south side of Mulberry street, at the distance of one hundred and twenty feet westward from the west side of Thirteenth street, in the said city, containing in front or breadth on the said Mulberry street twenty-two feet, and in length or depth extending southward one hundred and thirty-seven feet to a twenty feet wide alley, called Paper alley; bounded on the east by a lot of ground, granted by William Sansom and wife to William Johns, on ground rent; on the south by said Paper alley; on the west by the next described lot of ground; on the north by Mulberry street aforesaid. Also, all that certain lot or piece of ground, situate on the south side of the said Mulberry street, at the distance of one hundred and forty-two feet westward from the west side of the said Thirteenth street, containing in front or breadth on said Mulberry street twenty-two feet, and in length or depth extending southward one hundred and thirty-seven feet, to said Paper alley; bounded on the east by the above described lot of ground; on the south by the said Paper alley; on the west by the next hereinafter described lot of ground, and on the north by Mulberry street aforesaid. And also all that certain lot or piece of ground, situated on the south side of said Mulberry street, at the distance of one hundred and sixty-four feet westward from the west side of said Thirteenth street, containing in front or breadth on the said Mulberry street twenty-two feet, and in length or depth southward one hundred and thirty-seven feet, to said Paper alley; bounded on the east by the last above described lot of ground; on the south by the said Paper alley; on the west by a lot of ground, granted by the said Wm. Sansom and wife to Joseph Donaldson, on ground rent; and on the north by Mulberry street aforesaid. The first above described lot of ground, Benjamin H. Yarnall and wife, by indenture, dated the twenty-ninth day of August, anno Domini one thousand eight hundred and thirty-four, recorded in deed-book (S. H. F.) No. 11, page 407, and granted to Sarah Moss Phillips, wife of the said Isaac Philips, in fee. The second above described lot of ground, Edward Yarnall and wife, by indenture dated the twenty-ninth day of August, anno Domini one thousand eight hundred and thirty-four, recorded in deed-book (S. H. F.) No. 11, p. 485, and granted to the said Sarah Moss Phillips in fee. And the last above described lot of ground, Charles Yarnall, by indenture dated the twenty-ninth day of August, anno Domini one thousand eight hundred and thirty-four, recorded in deed-book (S. H. F.) No. 11, page 484, and granted to the said Sarah Moss Phillips in fee. Subject, each of the said lots of ground, to a yearly rent or sum of two hundred and thirty-one dollars, payable half yearly on the twenty day of October and April, unto Wm. Sansom, his heirs and assigns, without any deduction for taxes. Together with all and singular the buildings, improvements, ways, streets,

alleys, passages, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever, unto the said hereby granted premises belonging, or in any wise appertaining, and the reversions, remainders, rents, issues and profits thereof; to have and to hold all and singular, the hereditaments and premises hereby granted, with the appurtenances, unto the said John Moss, his heirs and assigns, to and for his and their only proper use and behoof forever; under and subject, each of the said described lots of ground, to the aforesaid yearly rent or sum of two hundred and thirty-one dollars, each payable as aforesaid; and the said Isaac Phillips, for himself, his heirs, executors and administrators, doth hereby covenant, promise and agree, to and with the said John Moss, his heirs and assigns, that he the said Isaac Phillips and his heirs, all and singular the hereditaments and premises hereby granted, with the appurtenances, unto the said John Moss, his heirs and assigns, against him, the said Isaac Phillips, and his heirs, and against all and every other person, or persons, whomsoever, lawfully claiming, or to claim by, from or under him, them, or any of them, shall and will warrant and forever defend.

In witness whereof, the said parties have hereunto interchangeably set their hands and seals, the day and year first above written.

I. PHILLIPS. [L. S.]

Sealed and delivered in the presence of us,
SAML. I. CURTIS,
P. CHRISTIAN.

Received the day of the date of the above written indenture, of the above named John Moss, the sum of seven thousand one hundred and two dollars seventeen cents, being the full consideration money above mentioned.

IS. PHILLIPS.

Witnesses at signing,
SAML. J. CURTIS,
P. CHRISTIAN.

The tenth day of April, A. D. 1837, before me, the subscriber, one of the aldermen of the City of Philadelphia, came the above named Isaac Phillips, and acknowledged the above written indenture to be his act and deed, and desired the same might be recorded as such.

Witness my hand and seal.

P. CHRISTIAN, *Ald.* [L. S.]

Recorded in the office for recording deeds, &c., for the City and County of Philadelphia, in deed book S. H. F., No. 13, page 102, &c.

[L. S.] Witness my hand and seal office, this 11th day of April, 1837.

SAMUEL H. FISHER,
Recorder.

No. 68.

Letter to John Moss.

Copy of a letter addressed to "John Moss, Esq., present."

OFFICE OF THE PENNSYLVANIA COMPANY for Insurances on Lives and Granting Annuities.

Philadelphia, April 10, 1837.

We hereby certify, that the rate of interest on which the value of life interests tendered to the company is computed, is not less than seven per cent. per annum. At this rate of interest, the value of a life income certain to be received during the life of Isaac Phillips, aged forty-nine years, is ten and eighty-nine hundredths years' purchase; and furthermore, that at this rate, an income of six hundred and fifty-seven dollars, certain to be received during the life of the said Isaac Phillips, is worth in present value the sum of seven thousand one hundred and two dollars and seventeen cents.

Given under our hands, and the corporate seal of the
[L. S.] Company, this tenth day of April, in the year one thousand and eight hundred and thirty-seven.

HYMAN GRATZ,
President.

Attest: SEARS C. WALKER,
Actuary.

No. 69.

Bill in Equity.

To the Honorable the Judges of the Court of Common Pleas of Philadelphia County, sitting as a Court of Equity.

Humbly complaining unto your honorable court, your orator, J. H. Eustace, sheweth:

That your orator is, and was at the time hereinafter mentioned, a resident at the city of Richmond, in the State of Virginia; that in the early part of the year 1837, Isaac Phillips and Joseph L. Moss, copartners, trading under the firm of R. & I. Phillips, requested your orator to purchase, on their account, drafts on bills of

exchange to a large amount, and at the same time instructed your orator, to draw on them for the amount that might be paid by him in the purchase of said drafts or bills, including charges; and also forwarded to your orator certain promissory notes, hereinafter more particularly mentioned and described, to be laid out by him in the purchase of said bills of exchange or drafts, or to be held by your orator, as security for the payment of the bills or drafts to be drawn by your orator as aforesaid, on the said R. & I. Phillips, as the same might arrive at maturity, or for the payment of any debt about to be incurred by the said R. & I Phillips.

Your orator accordingly placing faith and reliance on said R. & I. Phillips, and on the sufficiency of the security he had in the possession of said after described notes, purchased on their account in the months of Feb'y and March, A. D., 1837, the following drafts or bills of exchange, namely: Keir, Caskil & Co., sterling bill on Alexander Keir, for one thousand pounds sterling. William Keir's bill on Hunton & Alexander, for one thousand pounds sterling, £1,000. A. & J. Warwicks' bill on William J. Warwick, for three thousand pounds sterling, £3,000. A. W. Wathing's bill on W. J. Brown, for one hundred and twenty-seven pounds, four shillings and nine pence sterling, £127 4 9. Joseph Mark O. Lewis' bill on Gowan & Mark, London, for two thousand one hundred and seventy-five pounds sterling, £2,175. Keir, Caskil & Co., bill on Alexander Keir, payable in Glasgow, for four thousand pounds sterling, £4,000; for which said bills your orator paid, in the purchase thereof, fifty-five thousand one hundred and five 05-100 dollars, $55,105 05, and caused the said bills to be delivered to said R. & I. Phillips, who by means thereof became indebted to your orator in the aforesaid sum of $55,105 05. And your orator drew upon said R. & I. Phillips, on account of said debt, five drafts or bills, namely: one draft or bill, dated Richmond, Feb. 10, A. D., 1837, at 60 days after date, in favor of Lancaster Denby & Co., for $12,500; one other bill or draft, dated Feb'y 11, 1837, at 60 days, favor of Lancaster Denby & Co., for $14,890 47; one other draft or bill, dated March 6, 1837, at 30 days, in favor of Lancaster Denby & Co., for $9,792 49-100; and one other bill of same date, in favor of Lancaster Denby & Co., for $9,792 50-100, at 30 days; and one other draft or bill dated March 4, 1837, in favor of Henry Harrall, at fifteen days, for $90,085 92; making in all fifty-six thousand and sixty-one 38-100 dollars, $56,061 38; being the amount of the debt due as aforesaid, by said R. & I. Phillips, with charge and interest, all of which said drafts or bills were accepted by said R. & I. Phillips, your orator retaining as collateral security, to secure the payment of the same as they might arrive at maturity, the following described notes placed in his hands by said R. & I. Phillips, for said purpose as aforesaid, namely: 1st, a note drawn by Isaac S. Loyd, dated January 16th, 1837, at four months, for twenty-two thousand dollars; 2nd, one other note

drawn by J. L. & S. Josephs & Co., dated January 30th, 1837, at four months, for $9,075 25-100; one other note drawn by said J. L. & S. Josephs & Co., dated Feb'y 2d, 1837, at four months, for $9,098 50; 4th, one other note drawn by said J. L. & S. Josephs & Co., dated Feb'y 2d, 1837, at four months, for $9,072 75; 5th, one other note drawn by said J. L. & S. Josephs & Co., dated Jan'y 30, 1837, at four months, for $9,073 50; 6th, one other note drawn by Tryor & Anderson, dated Ootober 1, 1836, at eight months, for $1,322 98; 7th, one other note drawn by said Tryer & Anderson, dated October 15, 1836, at eight months, for $1,322 97; 8th, one other note drawn by Thomas Elmes, dated March 2, 1837, at four months, for $3,500; 9th and 10th, two other notes drawn by Isaac S. Loyd, dated Feb'y 23 and 27, 1837, respectively at four months, for $9,000 each; making in all eighty-two thousand four hundred and forty-five 95-100 dollars, all of which notes were drawn in favor of and endorsed by the said R. & I. Phillips, and were placed in the hands of your orator, as collateral security to secure the payment of any debt incurred and due to him by the said R. & I. Phillips, by reason of the purchase by him on their account of the drafts or bills of exchange first above mentioned and described, and also to secure the payment of the bills of exchange or drafts, drawn by your orator as aforesaid, for and on account of said or other debt.

Your orator further sheweth, that afterwards, to wit, before the last mentioned drafts or bills of exchange, drawn by him as aforesaid on the said R. and I. Phillips, became due, your orator being apprehensive that said R. & I. Phillips would be unable to pay the drafts or bills of exchange last mentioned drawn by your orator, and being desirous to prevent as much as possible a sacrifice of the promissory notes aforesaid, caused the said notes to be delivered to said R. & I. Phillips, for the benefit of your orator; and your orator would not have re-delivered said notes, had it not been distinctly understood and agreed, at the time, that his drafts aforesaid *stood and agreed at the time that his drafts aforesaid* would be duly paid at maturity by said R. & I. Phillips, for the purpose of enabling them to pay the drafts drawn by your orator as aforesaid, it being understood and agreed by your orator, and said R. & I. Phillips, at the time of said delivery, that said notes should be so applied, as to enable said R. & I. Phillips to pay the drafts drawn by your orator as aforesaid, as the same should arrive at maturity, which the said R. & I. Phillips were to do.

But now so it is, that all of said drafts have a long time since arrived at maturity, but none of them nor any part thereof have yet been paid by said R. & I. Phillips, nor have the said R. & I. Phillips applied the said notes or any of them to the benefit of your orator, as by said agreement they were bound to do, so as to enable themselves to pay said drafts; but on the contrary have

applied the same to their own use and purposes, entirely foreign and contrary to the agreement and understanding aforesaid; all which proceedings are contrary to equity and good conscience. And said drafts are now in possession of your orator, as owner thereof; and your orator further sheweths, that said R. & I. Phillips, after the said drafts arrived at maturity, to wit: on the second day of June, A. D., 1837, assigned and transferred all their estate and effects to Joseph M. Moss and David Samuel, in trust, for the benefit of their creditors, as by indenture bearing date said 22d June, 1837, and duly recorded, appears; and said Joseph M. Moss and David Samuels have accepted said trust, and have given bond as required by law, and have filed an appraisement in your Honorable Court, by which it appears they have received as assignees as aforesaid, notes or parts of them, and have since, as this deponent is informed, sold the same and converted the same into money arising from the sale thereof, have become liable to the control of your Honorable Court.

Your orator further sheweth, that tho' in good equity and conscience, said assignees ought to apply said notes or the proceeds arrising from the sale thereof, towards the payment of your orator's drafts aforesaid, they have not done so, contrary to good faith and equity.

To the end, therefore, that the said Joseph M. Moss and David Samuel, Isaac Phillips and Joseph L. Moss, may be decreed to answer such interrogations as may be put to them touching the matters and things aforesaid, and for such further relief in the premises as to your honorable court may seem fit; and in as much as your orator remediless at law in the premises, your orator prays that a writ of subpœna may be issued to said Isaac Phillips, Joseph L. Moss, Joseph M. Moss, and David Samuel, commanding them to be and appear before your honorable court, at such time as your honorable court shall direct, to abide the order of the said court in the premises: and your orator will ever pray, &c.

FALLON,
Proctor for J. H. Eustace.

J. H. Eustace, before named, being duly sworn according to law, saith, the statements made in the above bill and prayer are substantially true, to the best of his knowledge and belief.

J. H. EUSTACE.

STATE OF VIRGINIA,
City of Richmond, sc.

I, John Shore, a notary public for the city of Richmond, duly commissioned and sworn, do hereby certify and attest unto all whom it shall or may concern, that John H. Eustace personally appeared before me on this day, and having made oath that the state-

ments made in the foregoing bill and prayer are substantially true, to the best of his knowledge and belief, signed the foregoing affidavit in my presence.

Done and passed at Richmond aforesaid, on the 11th day of May, 1838.

JNO. SHORE, *Notary Public.*

J. H. EUSTACE *vs.* PHILLIPS & OTHERS. } Equity.—Philad'a.

Interrogations to be exhibited to Isaac Phillips, Joseph L. Moss, Joseph M. Moss, and David Samuel, in above case.

First. Do you know J. H. Eustace, orator or complainant in the above case?

Second. Do you know whether said J. H. Eustace ever had in his possession the following promissory notes, or any of them? namely:

1.	I. S. Loyd's note,	dated	Jan. 16, 1837,	at	4	mon's for	$22,000 00
2.	J. L. & S. Josephs' note,	"	30, 1837,	at	4	" "	9,075 75
3.	do.	"	Feb. 2, "	at	4	" "	9,078 50
4.	do.	"	" 2, "	at	4	" "	9,072 75
5.	do.	"	Jan. 30, "	at	4	" "	9,073 50
6.	Fryer & Anderson's	"	Oct. 1, 1836,	at	8	" "	1,322 98
7.	do.	"	" 15, "	at	8	" "	1,322 98
8.	Thomas Elmes'	"	M'ch 2, 1837,	at	4	" "	3,500 00
9.	Isaac S. Loyd's	"	Feb. 23, "	at	4	" "	9,000 00
10.	do.	"	" 27, "	at	4	" "	9,000 00
							$82,445 95

Endorsed by R. & I. Phillips, together amounting to

Being the same notes in the bill in above case more particularly described. If aye, when did J. H. Eustace cease to hold them, and what has become of said notes?

Did R. & I. Phillips hold any of said notes at the time of their assignment to Joseph M. Moss and David Samuel? If aye, what has been done with said notes? Please answer with respect to each note particularly.

Third. Have any of above notes been paid to said assignees, or any money been received by them on account of same? If aye, when and what money has been so received?

Fourth. Do the said assignees still hold any of said notes? If aye, what notes?

Fifth. If all the aforesaid ten notes were not in the hands of R. & I. Phillips at the time of their assignment, to wit, on June 22, 1837, please to say if, after said assignment, but previous to

said June 22, 1837, he had delivered to any person any of said notes? If aye, to whom, and what notes? When were they so delivered, and for what purpose or purposes? Please to answer circumstantially all you know in relation to the matter put to you in this interrogatory.

No. 25.

To the Judges of the Court of Common Pleas, for the city and county of Philadelphia, we, the appraisers appointed as per annexed certificate, report:

That being duly sworn to perform the duties entrusted to us, we valued and appraised the goods and effects of the assignors, as follows:

Merchandize,	$5,921 75
Real estate,	39,000 00
Stocks,	2,423 50
Furniture,	2,645 00
Bill receivable,	62,632 63
Book debts,	26,750 81
Total, dollars	139,373 69

All of which is respectfully submitted.

M. E. ISRAEL,
DANIEL SMITH, Jr.

Philadelphia, July 8th, 1837.

Oath of Appraisers.

We, Michael E. Israel and Daniel Smith, Jr., do solemnly swear, that we will act with impartiality and fidelity, in making an inventory and appraisement of the property assigned by R. & I. Phillips, to in trust for the benefit of creditors, by a certain indenture of assignment, dated the 22d day of June, in the year of our Lord one thousand eight hundred and thirty-seven, and that we will return to the Prothonotary's office, of the Court of Common Pleas of Philadelphia county, a true and perfect inventory, and a just and conscionable appraisement of the same, according to the best of our knowledge, skill and judgment.

M. E. ISRAEL,
DANIEL SMITH, Jr.

Sworn and subscribed before me, this 29th day of June, A. D. 1837.

ROB. MORRIS, *Pro.*

Inventory and appraisement of the goods and effects of R. & I. Phillips, assigned to Joseph M. Moss and David Samuel, in trust for the benefit of creditors.

Merchandize.

5 cases gum myrrh, 250 lbs. a 12½		$31 25
14 bales nut gall, 3500 " a 17		595 00
14 cases gum-arabic, 4900 " a 17		833 00
45 " vermecilla 2925 " a 10 cts.		292 50
7 casks sherry wine, 300 galls. 125		375 00
25 bales Spanish sheep's wool, 5300 lbs. 65-100		3,445 00
1 case plate glass,		350 00
	Dolls.	5,921 75

Real Estate.

Lot on Chestnut st. north side, west of Schuylkill 7th st., 66 feet front by 158 feet deep, -		$15,000 00
House and lot South Sixth st. below Market st., known as the American house, 25 feet on 6th by 173 feet deep, - - - -		20,000 00
House and lot fronting on Water and Front streets, south of Market, 19 feet front, by 41 feet deep,		4,000 00
	Dolls.	39,000 00

Stocks.

688 Scrip Bald Eagle & Spring Creek Navigation Company, $13 per share paid thereon,		$8,944 00
Steam Tow Boat Company, - - -		500 00
Elmira Railroad Stock, - - -		250 00
		$9,694 00
The depreciation in the foregoing stocks, we compute at 75 per ct. - - - -		7,270 50
Appraised value, - - -	Dolls.	2,423 50

Furniture—West parlours of house in Arch st.

2 imperial carpets, - - - -	$400 00
2 pier glasses, - - - -	300 00
2 mantel do. - - - -	500 00
2 candelabras and stand, - - -	60 00
20 fancy chairs and 4 lounges, - - -	360 00

Hall.

2 scagliola and pedestals,	$30 00
1 marble Pscyche and pedestal,	200 00
Hall floor-cloth.	80 00

East parlours.

1 mahogany table,	3 00
8 chairs, at 50-100	4 00
1 time piece,	40 00
1 piano,	75 00
1 mantel glass,	250 00
1 pier do.	75 00
1 pair lamps,	25 00
1 do. vases.	2 00

Chambers.

2 Brussels carpets,	150 00
1 pr. vases,	3 00
1 " fire screens,	1 00
4 chairs at 50 cts.	2 00
2 screens,	1 00
5 chairs at 50 cts.	2 50
1 bureau,	5 00
1 wash stand,	1 00
1 bedstead, mahogany,	20 00
1 pair candlesticks,	2 00
2 mahogany book cases,	30 00
6 chairs at $1	6 00
1 pair glass lamps,	2 00
1 wardrobe,	10 00
1 bedstead,	2 50
2 chairs,	50
1 bedstead,	2 00
Old chair and table,	50
	$2,645 00

Bill receivable on hand.

April 7th, J. L. & S. Joseph & Co.,	$1,817 63
Jackson Riddle & Co. April 8th,	445 23
V. Herman & Son, 22d	2,030 45
Isaac M. Moss, May 11,	500 00
J. L. & S. Joseph & Co., " 30,	9,074 50
do. " "	9,075 50

J. D. & A. D. Brick,	May	4,	-	-	$1,170 67
Chapron & Nidilet,	"	17,	-	-	419 18
Richard Oakly,	"	4,	-	-	323 00
Isaac M. Moss,	June	11,	-	-	500 00
J. L. & S. Joseph & Co.,	"	5,	-	-	9,072 75
do.	"	"	-	-	9,078 50
do.	"	2,	-	-	9,073 50
do.	"	"	-	-	9,075 25
Fryer & Anderson,	"	18,	-	-	1,322 97
do.	"	4,	-	-	1,322 98
Isaac M. Moss,	July	11,	-	-	500 00
W. Wood & Co., Boston,	"	30,	-	-	298 30
J. & W. Penfold & Co.,	"	7,	-	-	172 12
Isaac S. Loyd,	"	22,	-	-	400 00
John P. Flagg, Boston,	"	19,	-	-	1,867 35
Kipara & Co., N. Y.	"	5,	-	-	1,264 50
P. G. Taylor & Co.,	"	4,	-	-	1,034 86
Crandall & Frietas,	"	2,	-	-	595 04
R. P. Denty,	"	"	-	-	200 00
L. J. Levy,	Aug.	20,	-	-	2,006 43
J. V. Machett,	"	6,	-	-	272 22
Wm. Halsey & Co.,	"	28,	-	-	1,588 86
Delano & Whitney, Bost.	"	17,	-	-	274 44
Haviland, Reese & Co.,	"	6,	-	-	314 14
Charles Freeman,	"	16,	-	-	416 76
		39			
H. M. & B. Hart,	"	2,	-	-	847 50
Geo. Barrell,	"	9,	-	-	931 90
do.	"	21,	-	-	931 90
Ed. C. Biddle,	"	20,	-	-	707 54
Charles Freeman	"	16,	-	-	382 36
Edward C. Biddle,	March	14,	-	-	2,628 26
		38			
do.	"	14,	-	-	2,628 27
		39			
do.	"	14,	-	-	2,628 27
		40			
Vansickle & Randall,	Sept.	11,	-	-	134 46
Wm. Berger,	"	26,	-	-	475 47
See & Remington,	"	5,	-	-	2,588 58
Charles Freeman,	Feb.	16,	-	-	382 36
		38			
J. L. & S. Josephs & Co.	Mch.	29,	-	-	1,403 83
L. J. Levy,	Nov.	6,	-	-	1,240 00
F. B. Rhodes & Co.,	Sept.	9,	-	-	2,325 00
do. 3 notes $1700 each,	"	"	-	-	5,100 00

F. B. Rhodes & Co. 2 notes $2,325 each, Nov.			-	$4,650 00
do. 1 do.	Nov.	10,	- -	2,100 00
do.	"	18,	- -	2,925 00
do.	Sept.	18,	- -	1,121 05
C. F. Raymond & Co.	Aug.	30,	- -	1,000 00
Edward C. Biddle,	"	21,	- -	500 00
Charles Squire,	"	5,	- -	710 00
Geo. Coggill & Sons,	Oct.	14,	- -	184 62
Reaugh & Douglass,	Aug.	4,	- -	939 47
do.	Sept.	4,	- -	939 47
do.	Oct.	4,	- -	939 47
W. & J. Fry, Wheeling,	"	1,	- -	395 06
W. C. & T. Webb,	"	4,	- -	426 25
J. Evans & Co., N. O.	Dec.	18,	- -	832 05
do.	Jan.	18,	- -	835 92
do.	Feb.	18,	- -	839 79
J. J. & F. Shippin, N. Y.	Sept.	28, 38	- -	232 32
do.	Dec.	28, 38	- -	232 33
do.	March,	28, 39	- -	232 33
J. H. Carey & Co.,	Sept.	13,	- -	900 00
Charles Barney,	"	"	- -	900 00
J. P. Flagg, Boston,				933 67
				$123,607 63

Included in the above, there remains under protest, extended, doubtful and disputed, $71,735, of which it is estimated, that 15 per ct. may be obtained, which would leave of the disputed bills the sum - 60,975 00

$62,632 63

Appraised value of the bills receivable on hand.

Book Debts.

Barrett, Thomas & Co. - - - - -	$132,445 06
Cook, W. Wallace - - - - - -	208 97
Camels hair with F. Samuel - - - -	147 65
Clark, Jacob - - - - - - - -	20 00
Cash on hand - - - - - - - -	271 83
Desilver, Thomas and Co. - - - -	1,215 08
David, Victor - - - - - - -	20,738 06
Eaton, W. Jarvis - - - - - -	101 74
Fryer and Anderson - - - - -	30,000 00
Fernandez, H. P. - - - - - -	3,549 03

Freeland, Aaron	$801 09
Flemmington, & Co.	27 71
Gratz, Jacob	100 00
Goarly, D.	55 75
Grain importation with V. A. Sartori	6,346 35
Goodman and Daniels	26,671 28
Harper, C. A. & Co.	23,281 18
Herman & Co.	228 33
Ditto quicksilver in ac.	8,834 18
Hopkins, N.	75 00
Israel, M. E.	141 41
Joseph, J. L. & S. & Com.	24,367 32
Ditto life interest stock	90,000 00
Levy, J. C.	85,61 60
Louisiana Co.	159 62
Lizardi & Co.	90 00
Linn & Richie	427 86
Lazarus H.	1,000 00
	$379,966 20
Herman and Sons, Sam'l	3,241 52
Ditto	20,801 52
Loyd, Isaac S.	79,681 28
Richards, G. N.	4,900 00
Saint, D.	1,000 00
Straw hats with Samuel	485 44
Shipment of turpentine	507 86
Stern, Julius	100 00
Sartori	5,088 28
Sarpes, Converse & Co.	19,119 21
Shipment tobacco, Sartori	1,109 36
Smith, Wm.	265 00
Smith, R. Small	119 25
Swain, J. L.	1,500 00
Smith and Brown	3,045 50
Toby, Thomas & Co.	1,967 06
Welsh, J. R.	514 07
Wardell & Co.	2,456 79
Ditto	12 88
Biddle, Thomas & Co.	424 42
Dollars	526,305 64

Of the foregoing book debts there appears under attachment, bankrupt offsetts, and disputed, the sum of $499,554 83

Appraised value of the book debts 26,750 81

I, S. Hart, Prothonotary of the Court of Common Pleas, for coun-

ty of Philadelphia, do certify the foregoing to be a true copy of the original record on file in my office.

Witness my hand, and the seal of the said court, this
[L. S.] twenty-seventh day of Oct. A. D. 1840.
S. HART, *Prothonotary.*

No. 43.—Bond and warrant of attorney between Isaac Phillips, et al.

Know all men by these presents, that we, Isaac Phillips, of Arch st. above 13th street, Joseph L. Moss, Walnut, above 13th, and Joseph M. Moss of Penn township, are held and firmly bound unto the Commonwealth of Pennsylvania, in the sum of forty thousand dollars, to be paid to the said Commonwealth; the which payment well and truly to be made, we bind ourselves jointly and severally, for and in the whole, our heirs, executors and administrators, and each and every of them, firmly by these presents, sealed with our seals, dated the 4th day of February, in the year of our Lord one thousand eight hundred and thirty-seven, 1837.

The condition of this obligation is, that if the above bounden Isaac Phillips, administrator of all and singular the goods, chattles and credits of Robert Phillips, late of the city of Philadelphia, deceased, do immediately publish for creditors, &c., and make or cause to be made, a true and perfect inventory and inventories, according to law, of all and singular, the goods, chattles and credits of the said deceased, which have come or shall come to the hands, possession or knowledge of the said Isaac Phillips, administrator as aforesaid, or unto the hands or possession of any other person or persons for him; and the same, so made, do exhibit, or cause to be exhibited *into* the register's office, in the county of Philadelphia, on or before the 4th day of March next ensuing; and the same goods, chattels and credits, and all other the goods, chattels and credits of the said deceased at the time of his death, which, at any time after, shall come to the hands or possession of the said administrator as aforesaid, or unto the hands or possession of any other person or persons for him, do well and truly administer according to law; and further, do make or cause to be made a just and true account of his said administration, at or before the 4th day of Feb'y, 1838, or when thereunto legally required; and all the rest and residue of the said goods, chattels and credits which shall be found remaining upon the said administrator's account (the same being first examined and allowed of by the Orphan's Court of the city and county of Phila., shall deliver and pay unto such person or persons as the said Orphan's Court, by their decree and sentence, pursuant to law, shall limit and appoint, and shall well and truly comply with the laws of this Commonwealth relating to collateral inheritances; and if it shall hereafter appear that any last will and testament was made by the said deceased, and the same shall be proved according to law, if the said Isaac, administrator as aforesaid, being thereunto required,

do surrender the said letters of administration in the register's office aforesaid, then this obligation to be void, otherwise to be and remain in full force.

IS. PHILIPS, [L. S.]
J. L. MOSS, [L. S.]
J. M. MOSS. [L. S.]

Signed, sealed and delivered in the presence of *us*,
JOHN B. SEWALL.

REGISTER'S OFFICE,
City and County of Philadelphia, ss.

4th day of Feb'y, A. D. 1837, then personally came the within named Isaac Philips, and on his solemn oath did depose, declare and say, that he believes that the within named Robert Philips died without a will; that he will, as the administrator aforesaid, well and truly administer the goods, chattles and personal estate agreeably to law.

That he will immediately publish for creditors, once a week for six successive weeks, and render into the register's office, within thirty days from this date, a just and true inventory and appraisement of the personal estate of said deceased, and additional inventories when necessary. Also a just and true account, calculation and reckoning of his said administration, in one year from this date, or when thereunto legally required; that he will well and truly comply with the provisions of law relating to collateral inheritances. And also that he is brother of said deceased; and also, that the whole of the goods, chattles, rights and credits of the personal estate he died possessed of, in the aggregate, do not in value exceed the sum of twenty thousand dollars, to the best of his knowledge and belief.

IS. PHILIPS.

Sworn and subscribed before me, the day and year aforesaid, and letters granted unto him.

JOHN B. SEWALL, *Dept. Register.*

CITY AND COUNTY OF PHILADELPHIA, *ss:*

I certify the foregoing printing and writing to be a true copy of the original bond, as filed and recorded in the register's office for the city and county of Philadelphia.

Given under my hand and seal of office, this 31st day
[L. S.] of October, A. D. 1840.

No. 28.

Articles of agreement made the 15th day of September, in the year one thousand eight hundred and thirty-four, between Isaac

Phillips, merchant, of the first part, and George Linck, house carpenter, of the other part, all of the city of Philadelphia, witnesseth: that the said George Linck, for the consideration hereinafter mentioned, doth for himself, his executors and administrators, covenant and agree to and with the Isaac Phillips, merchant, his executors, administrators and assigns, that the said George Linck shall and will, in a good workmanlike manner, and with good materials, complete and finish a dwelling house to be built in Arch street, above 13th street, on the south side of Arch street; the outside stone walls to be 24 inches thick, &c. &c.

(*The details and plan of the projected building here occupy above three pages of the said agreement.*)

In consideration whereof, the said Isaac Phillips, merchant, doth for himself, his executors and administrators, covenant and promise well and truly to pay, or cause to be paid, unto the said George Linck, his executors, administrators or assigns, first, all the building stone now piled on the said lot, and further, in six equal payments, as follows: the first payment, when the first floor of joist is laid on the walls, say $3,333 33; the second payment, when the third floor of joist is laid on the walls, say $3,333 33; the third payment, when the roof is on, say $3,333 33; the fourth payment, when the plasterers commence, say $3,333 33; the fifth payment, when the plastering is finished, say $3,333 33; the sixth and last payment, when all the house is completely finished and the key delivered, say $3,333 33; making together the six payments, $20,000, for building a house, as it is drawn on the plan, and as it is described, and all the materials appertaining thereto.

IS. PHILLIPS, [L. S.]
GEO. LINCK. [L. S.]

Witness present,
J. L. Moss.

Omitted to mention railings, front steps, hanging bells complete.

No. 22—A.

In the Common pleas of Philadelphia County, in the matter of Joseph L. Moss and Isaac Phillips, insolvent debtors.

July 20, 1838.—The court direct the trustees, Godfrey Weber and H. Pratt McKean, to enter bond with sureties to be approved by the court, in the sum of twenty thousand dollars, and approved of A. E. Borie and Henry J. Boller as such sureties.

Sept. 29, 1838.—On motion of J. Randall, Esq., the court permit the petitioners, Joseph L. Moss and Isaac Phillips, to sign the

assignments annexed to their petitions, and direct the date of said assignments to be filled up, as of this day; and that the time from which said assignments shall take effect, shall thereafter be determined by the proper authority; and the court refuse to alter the appointment of assignees, made at the time the petitioners were sworn and discharged, to wit, in the term of December, 1837.

Eod. dic.—Bond entered by trustees agreeably to the order of court, made the twentieth day of July, A. D. 1838. Trustees' bond book No. 1, page 251, a copy whereof is hereto annexed, marked (A.)

In testimony whereof, I have hereunto set my hand, and affixed the seal of the said court at Philadelphia, this 2d day of October, A. D. 1838.

[L. S.]

ROBT. MORRIS,
Prothonotary.

(A.)

Know all men by these presents, that we, Godfrey Weber, H. Pratt McKean, A. E. Borie and Henry J. Boller, are held and firmly bound unto the Commonwealth of Pennsylvania, in the sum of twenty thousand dollars, lawful money of the United States, to the said commonwealth, its certain attorney or assigns, to which payment, well and truly to be made, we do bind and oblige ourselves, our heirs, executors, or administrators and assigns, jointly and severally, by these presents; sealed with our seals, dated the twenty-ninth day of September, A. D. eighteen hundred and thirty-eight.

Whereas, the above bounden Godfrey Weber and H. Pratt McKean have been appointed by the court of common pleas, of Philadelphia county, trustees of all the estate, real and personal, of Joseph L. Moss and Isaac Phillips, insolvent debtors:

Now the condition of this obligation is such, that if the above bounden Godfrey Weber and H. Pratt McKean, trustees aforesaid, shall well and faithfully execute the said trust, in all legal respects, then this instrument to be void, otherwise to remain in full force.

GODFREY WEBER, [L. S.]
H. PRATT McKEAN, [L. S.]
A. E. BORIE, [L. S.]
HENRY J. BOLLER. [L. S.]

Sealed and delivered in the presence of,
(word "an" stricked out.)
ROBT. MORRIS.

Sept. 29, 1838.—The above date inserted before the acknowledgment of the bond.

ROBT. MORRIS.

PENNSYLVANIA,
Philadelphia County, ss.

I, Edward King, Esq., President of the first Judicial District of Pennsylvania, and Presiding Judge of the Court of Common Pleas, Orphans' Court and of General Quarter Session of the peace for the County of Philadelphia, do certify, that the foregoing certificate and attestation, made by Robert Morris, Esq., Prothonotary of the said Court of Common Pleas, whose name is hereto subscribed, and seal of office affixed, are in due form, and made by the proper officer.

In testimony whereof, I have hereunto set my hand, the second day of October, eighteen hundred and thirty-eight.

PHILADELPHIA CITY AND COUNTY, *ss.*

I, Robert Morris, Esquire, Prothonotary of the court of common pleas, for the county of Philadelphia, do certify, that the Honorable Edward King, Esq., by whom the foregoing attestation is made, whose name is thereto subscribed, was at the time of the making thereof, and still is, President Judge of the first judicial district of Pennsylvania, and Presiding Judge of the court of common pleas, orphans' court and court of general quarter sessions of the peace, for the county of Philadelphia, duly commissioned and sworn, to all whose acts as such full faith and credit are and ought to be given, as well in courts of judicature as elsewhere.

In testimony whereof, I have hereunto set my hand and
[L. S.] affixed the seal of the said court, the second day of October, eighteen hundred and thirty-eight.

ROBERT MORRIS,
Prothonotary.

Be it remembered, that at a court of common pleas, held at Philadelphia for the county of Philadelphia, on the second day of October, A. D. one thousand eight hundred and thirty-seven, before the Honorable Edward King, Esq., President, and his associates, judges of the said court, the following petition was presented, to wit:

To the Honorable the Judges of the Court of Common Pleas of Philadelphia County.

The petition of Isaac Phillips, late of the City, now of the County of Philadelphia, merchant, respectfully showeth:

That your petitioner, by reason of sundry losses and misfortunes, is now unable to pay and satisfy his just debts, and therefore is

compelled to apply to your honourable court for the relief provided for insolvent debtors, by the existing insolvent laws of this commonwealth; that your petitioner resides in the county of Philadelphia, and has resided within the State of Pennsylvania six months immediately preceding this his application; and your petitioner has hereto annexed the following schedules:

1st. A statement of all the estate, effects and property of the petitioner, wheresoever situate, and of whatsoever kind.

2d. A statement of the debts due by him, containing the names of his creditors, the amount due to each, and the nature or character of the debt, so far as he can ascertain the same.

3d. A statement of the causes of his insolvency, and of the extent of his losses.

Your petitioner therefore applies to your honourable court, and prays that your honours will grant him such relief as is described by the existing insolvent laws of this commonwealth.

IS. PHILLIPS.

Isaac Phillips, the above named petitioner, being duly sworn according to law, saith, that the facts set forth in the above petition and in the annexed schedules or statements, are just and true.

IS. PHILLIPS.

Sworn and subscribed before me, this 30th day of September, A. D. 1837.

WILLIAM MILNOR,
Alderman.

Sworn to before me, 2nd October, 1837.

S. BADGER,
Alderman.

A Statement of all the estate, effects and property of the petitioner, wheresoever situate, and of whatsoever kind.

Your petitioner, Isaac Phillips, has no estate, effects or property, on the twenty-second day of March, A. D. 1837; your petitioner and his copartner, Joseph L. Moss, composing the late firm of R. & I. Phillips, executed an assignment of all the estate, effects and property, joint and several of the said firm and of this petitioner, in the State of New York, in trust for payment of debts; a true copy of which assignment is hereto annexed, marked A. And on the twenty-second day of June, A. D. 1837, your petitioner, and his copartner, Joseph L. Moss, executed and delivered a general assignment of all their estate, effects and property wheresoever situate, and whatsoever kind of this petitioner, in trust for the payment of debts; copy of which assignment is hereto annexed, marked B.

A list of the debts due to your petitioner and the said late firm, and of the property so assigned to his creditors, will be found annexed, marked C.

And on the third day of June, A. D. 1837, your petitioner sold and delivered to Joseph Mora Moss, a portion of his household goods and furniture, specified and stated in the schedule hereunto appended, marked D., and all the residue of his furniture was assigned to his creditors as above. Your petitioner also prays, that the inventory of the assigned property filed and remaining of record in this court may be taken as part of this statement.

IS. PHILLIPS.

Know all men by these presents, that I, Isaac Phillips, the above named petitioner, have assigned, transferred, and set over, and by these presents do assign, transfer and set over, unto G. Weber and H. Pratt McKean, their heirs and assigns, all my estate, property and effects whatsoever, to, for, and upon, the uses, trusts and purposes, designated by the act, entitled "an act relating to insolvent debtors," passed the sixteenth day of June, A. D. one thousand eight hundred and thirty-six.

Witness my hand and seal, this day of A. D. 18

[L. S.]

Witness present.

The statement of the debts due by the petitioner, containing the names of his creditors, the amount due to each, and the nature and character of the debts, so far as he can ascertain the same, is hereto annexed in a certain exhibit or schedule, marked E; altho' from the fact of large amounts of his debts, consisting of notes, bills, and acceptances, and negotiable paper, it is not possible for him to state, with accuracy, the names of the present holders of each and every one of them.

IS. PHILLIPS.

A Statement of the causes of the petitioner's insolvency, and of the extent of his losses.

Your petitioner and his copartner, Joseph L. Moss, when they entered into business, undertook to assume, liquidate and continue the business of the late firm of R. & I. Phillips, (then composed of this petitioner and his brother, Robert Phillips, since deceased.) His losses upon the stocks and other property of that firm, which was greatly extended, and merchandise much depreciated, cannot be ascertained with accuracy, but your petitioner believes that they were not less than $250,000.

After prosecuting the business of the present firm of R. & I. Phillips for some time, as your petitioner believed, to great profit, he and his copartner were suddenly reduced to ruin and insolvency,

by the bankruptcy of several other houses who were largely indebted to this petitioner's house, and among them the Messieurs Josephs, of New York, by whom the petitioner's firm suffered a loss of,

Cash balance, - - - - -	$116,000
Paper of theirs held by R. & I. Phillips, - -	60,000
Drafts of theirs accepted by R. & I. Phillips, -	90,000
Bills of theirs on Europe, endorsed by R. & I. Phillips, - - - - -	250,000
And by the stoppage of several New Orleans and Mobile houses, for whom your petitioner's firm had accepted drafts to the extent of - - and who were unable to remit to your petitioner's firm funds to meet the same.	240,413 40-100
By the bankruptcy of Wm. Sidney Warwick, of London, for whom petitioner's firm had paid - and drew on him for repayment; $80,000 of which drafts were dishonored.	100,000

In consequence of the general disasters of the times, numerous domestic bills of exchange, drawn on New Orleans, Mobile, Charleston, different parts of Kentucky, &c., to a very large amount, purchased by your petitioner's firm, were returned under protest and lost.

The same causes operated to produce, and did cause the dishonor of bills drawn at those places on Europe, and negotiated by your petitioner's firm, to the extent of about $100,000.

By examination of the accounts of the late firm of R. & I. Phillips, existing for fifteen years previous to the formation of this your petitioner's firm, the expenses of living of the partners, so far as they can be ascertained, amount as follows:

Robert and Isaac Phillips.

Robert Phillips, in fifteen years, - - - -	$75,000
Isaac Phillips, do., - - - -	60,000

R. & I. Phillips.

Isaac Phillips, in four years, - - - - -	$22,530
Joseph L. Moss, ditto, - - - - -	18,633
	$176,163

IS. PHILLIPS.

A.

This indenture, made the twenty-second day of March, in the year of our Lord one thousand eight hundred and thirty-seven, be-

tween Isaac Phillips and Joseph L. Moss, composing the firm of R. & I. Phillips, of Philadelphia, in the State of Pennsylvania, of the first part, and Joseph M. Moss and David Samuel, of the city of Philadelphia, merchants, of the second part:—Whereas, owing to divers losses and misfortunes, in the mercantile business and opererations, the said parties of the first part have been compelled to suspend *the* payments; now, therefore, this indenture witnesseth, that the said parties of the first part, for and in consideration of the premises, and of one dollar to them in hand paid by the said parties of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have, and each of them hath granted, bargained and sold, assigned, transferred and set over, and by these presents do, and each of them doth, grant, bargain and sell, assign, transfer and set over, unto the said parties of the second part, and to the survivor of them, and unto the heirs, executors, administrators and assigns of such survivor, all and singular, the joint and several property and estate of the said parties of the first part, and of each of them, real and personal, situate, lying and being, or due, owing, or belonging to them, or either of them, within the State of NewYork; and more particularly three houses and lots in Walker street, in the city of New York, and two bonds and mortgages on two other houses and lots in Walker street aforesaid; all the merchandize on board the ship Groton, now lying in the port of New York; and all merchandize, chattels, or effects, in the hands of Messrs. Levy & Colgate, or any other persons in the city of New York; all merchandize which may hereafter arrive in the said city of New York, belonging to the said parties of the first part, or either of them; all debts, dues, demands, accounts, and balances of accounts due and owing, or hereafter to become due and owing to the said parties of the first part, or either of them, by Messrs. J. L. & S. Joseph & Co., of New York, or any other person or persons residing in the State of New York; and all and singular, the estate, right, title, interest, property, claim, and demand, whatsoever, both at law and in equity, of the said parties of the first part, and each and every of them, of, into, and out of the said hereby assigned premises, or any and every part thereof: To have and to hold, receive, and take the said premises hereby assigned, and every part thereof, unto the said parties of the second part, and the survivor of them, and the heirs, executors, administrators and assigns of such survivor, in trust, nevertheless, and to and for the several uses and purposes hereinafter mentioned and declared, of and concerning the same, (that is to say,) upon trust, that the said parties of the second part, and the survivor of them, and the heirs, administrators and assigns of such survivor, do, and shall, in such manner, and at such time or times, either at public or private sale, and for cash or upon credit, and by and under such terms and prices as they shall think reasonable and proper, absolutely sell, convey and dispose of all

and singular the said estate, property and effects hereby assigned, or so much thereof as can be sold or disposed of; and also do and shall receive, collect and get in all the residue of the said premises, and by and out of the monies which shall arise from such sale or sales, and which shall be collected, received and gotten in as aforesaid, do pay and discharge, or return and reimburse themselves for all such costs, charges, expenses and disbursements as may have been or shall be rightfully paid or incurred by them, or for which they shall or may be liable in and about the execution of the trusts herein contained, or in any wise relating thereto, together with a just and reasonable compensation for their services in this behalf, and in the execution of the trusts herein contained: And then, upon the further trust, that the said parties of the second part, and the survivor of them, and the executors and administrators of such survivor, shall and do pay and satisfy to Messrs. Jonas Phillips & Sons, of London, and to the individual members of that firm, and to each and every of them, all such sum and sums of money, debts, dues, and demands as now are due and owing, or which are now contracted, though payable hereafter by the said parties of the first part, jointly or severally, to the said Jonas Phillips & Sons, or to all, any, or either of the individual members of the said firm; and also, lawful interest on the said several sums from the time they respectively are due until paid: And then upon the further trusts, to divide and distribute all the residue of the said trust moneys which shall have been by them raised, received and gotten in as aforesaid, to and among the other creditors of the said parties of the first part, whether their debts be now due or owing, and are payable hereafter pari passu, or in equal rateable proportions, according to the amount of their respective just claims and demands.

And the said parties of the first part, do hereby jointly and severally covenant and agree to and with the said parties of the second part, and the survivor of them, and the heirs, administrators and executors of such survivor, that they, the said parties of the first part, and each of them, their and each of their heirs, executors and administrators, shall and will do and execute any other and further lawful and reasonable act, matter or thing whatsoever, as well for confirming these presents as for the further and better granting and assigning the premises in the manner and upon the trusts aforesaid, when thereto required by the said parties of the second part or the survivor of them, or the heirs, executors or administrators of such survivor. And it is hereby expressly understood and agreed by and between the parties to these presents, that the said parties of the second part or the survivors of them, or the executors or administrators of such survivor, shall be at liberty to compound with any debtor or debtors of the said parties of the first part, whose debt is hereby assigned, as they or he may think fit; and also to refer to arbitration any debt, claim, demand, matter or thing hereby assigned. And the said parties of the first part, in consideration of the premises,

do by these presents jointly and severally constitute and appoint the said parties of the second part and the survivor of them, to be their lawful attorney and attornies, irrevocable in the premises, in their name and stead, or ortherwise, as occasion may require, but to and for the several uses, trusts, intents and purposes herein expressed jointly and severally to ask, demand, sue for, and recover, collect and receive all debts, dues, demands, property, estate and effects, of or belonging to them, and hereby assigned or meant and intended so to be, and to give proper acquittances and discharges therefor; also in the name of the said parties of the first part or either of them or otherwise, as occasion may require, but to and for the uses, trusts, intents and purposes aforesaid, to institute, prosecute, defend and pursue to judgment and execution, any suit or suits, either at law or in equity, and in all courts and places whatsoever; and also to compound for, arbitrate and agree, in and about any cause or causes, matters or things whatsoever, that may arise under or in the execution of these presents or any part or parts thereof. Also to do, transact and perform all and every other further and lawful act or acts, deeds, matters and things in and about the premises, as largely, amply and beneficially, to all intents and purposes whatsoever, as the said parties of the first part or either of them might or could do if these presents had not been executed, with full power of substitution and revocation; they, the said parties of the first part, hereby ratifying, confirming and allowing all and whatsoever the said parties of the second part, or either of them, shall or may jointly or severally, lawfully do or cause to be done, in the premises, under or by virtue of these presents; and the said parties of the second part, severally accept of the trusts hereby reposed in them, and signify their acceptance thereof by executing these presents.

In witness whereof, the parties to these presents have hereunto set their respective hands and seals, the day and year herein first above written.

I. PHILLIPS, [L. S.]
JOSEPH L. MOSS, [L. S.]
J. MORA MOSS, [L. S.]
DAVID SAMUEL. [L. S.]

Sealed and delivered in the presence of
(The word "second," on the first line of the first page, being written on an erasure, and the words "or either of them" on the said first page, interlined.)
THOMAS DUNLAP,
FRANCIS GRIFFIN.

CITY AND COUNTY OF NEW YORK:

On the twenty-third day of March, in the year of our Lord one thousand eight hundred and thirty-seven, before me, personally came and appeared Francis Griffin, of the city of New York, to me

known as one of the subscribing witnesses to the foregoing conveyance, who being by me duly sworn, did depose and say, that he resides at number eighteen, Vesey street, in the city of New York; that he knows Isaac Phillips, Joseph L. Moss, Joseph M. Moss and David Samuel, the persons described, and who have severally executed the said conveyance; and that he, the said Francis Griffin, was present and saw the said Isaac Phillips, Joseph L. Moss, Joseph M. Moss and David Samuel severally execute, and heard them severally acknowledge the said conveyance as their act and deed; and that thereupon, he, together with Thomas Dunlap, became subscribing witnesses thereto; all which being to me satisfactory evidence of the due execution of the said conveyance, let it be recorded.

N. W. STRONG, *Commissioner, &c.*

I, James Gulick, register for the city and county of New York, do hereby certify, that I have compared the preceding instrument of conveyance with the original of the same, recorded in said office of register on the twenty-third day of March, 1837, at 30 min. past 3, P. M., in Liber page of conveyances, and the same is a correct transcript therefrom, and of the whole of such original record.

(Sd.) W. CORP, *Dep. Reg.*

New York, March 31st, 1837.

B.

This indenture, made the twenty-second day of June, in the year of our Lord one thousand eight hundred and thirty-seven, by and between Isaac Phillips, of the city of Philadelphia, merchant, and Sarah, his wife, and Joseph L. Moss, of the same city, merchant, and Julia, his wife, the said Isaac Phillips and Joseph L. Moss being co-partners in trade under the firm of R. and I. Phillips, of the first part, and Joseph M. Moss and David Samuel, of the same city, merchants, of the second part; whereas, the said parties of the first part, on the day of the date of these presents, are justly and truly indebted unto sundry persons in divers sums of money, which, by reason of numerous and heavy losses and reverses, they are, at present, unable fully to pay and satisfy, but are desirous to apply and appropriate their estate and effects for and toward the payments and satisfaction of their said debts so far as the same may avail. Now this indenture witnesseth, that the said parties of the first part, for and in consideration of the premises and of one dollar to them in hand, at and before the ensealing and delivery of these presents, by the said parties of the second part, well and truly paid, the receipt whereof is hereby acknowledged, as also of divers other good and valuable considerations them thereunto moving, have granted, bargained and sold, assigned, transferred and set over, and by these presents, do grant, bargain and sell, assign, transfer and set over, unto the said parties of the second part, and to the survivor

of them, and to the heirs, executors, administrators and assigns of the said survivor, all and singular the goods and chattles, merchandise, debts, sum and sums of money due, owing or belonging to the said R. & I. Phillips, and all securities had, taken or obtained for the same, and also all the right, title and interest, property, claim and demand of them, the said R. & I. Phillips, of, in, and to the same, and any and every part thereof; and the said parties of the second part, for and upon the same considerations as hereinbefore set forth, have also granted, bargained and sold, aliened, enfeoffed, released and confirmed, and by these presents do grant, bargain and sell, alien, enfeoff, release and confirm unto the said parties of the second part, and to the survivor of them, his heirs, executors, administrators and assigns, all and singular the following real estate, that is to say:

All that lot or piece of ground situate on the north side of Chestnut street, at the distance of forty-two feet westward from the west side of Schuylkill 7th street, in the city of Philadelphia, containing in front or breadth, on said Chestnut street, sixty-six feet, and extending in length or depth northward, one hundred and fifty-eight feet to Linden street (being the same premises which George H. Thompson, and Rebecca H., his wife, granted to the said Isaac Phillips, in fee, by indenture bearing date on the ninth day of June, A. D. 1835, and duly recorded); and also all that certain three story brick messuage and lot on the westerly side of Sixth street, between High and Chestnut streets, in the said city, containing in front or breadth on said Sixth street, twenty-five feet, more or less, and of that breadth, extending in length or depth westward to Decatur street one hundred and seventy-three feet, more or less, with the appurtenances. And also all that certain messuage or store and lot of ground on the east side of Delaware Front street, between Walnut and Spruce streets, in the said city, containing in front or breadth on the said Front street nineteen feet, and in length or depth from the said Front street to Water street, about forty-one feet; being the same premises which John Sergeant, of the city of Philadelphia, Esquire, and *and* Margaretta, his wife, by indenture bearing date the second day of June, A. D. one thousand eight hundred and twenty-five, granted and conveyed unto the said Isaac Phillips in fee; and all the right, title, and interest, property, claim, estate, and demand, of them, the parties of the second part, or either of them, of, in, or to the said mentioned real estate, with the appurtenances; to have and to hold, receive and take, all and singular, the said goods and chattels, merchandize, debts, sum and sums of money, securities for the same, rights, credits, and estate, real and personal, hereby assigned or mentioned, or intended so to be, with their and every of their appurtenances, unto the said parties of the second part, and to the survivor of them, his heirs, administrators and assigns, from henceforth forever, upon the special trust and confidence, nevertheless, and to no other, and to the

intent and purpose that they, the said parties to the second part, the survivor of them, his heirs, executors, administrators and assigns, do and shall, with all convenient speed, make sale and disposition of all and singular the estate, real and personal, hereby assigned, for the most and best price they can get for the same; and use their best endeavors, by all lawful ways and means, to obtain, recover, and receive into their hands and possession all and singular the said debts, sum and sums of money, due and owing to the said R. & I. Phillips; and that after deducting the reasonable expenses of creating and executing this trust, they, the said parties of the second part, the survivor of them, and his heirs, executors, administrators and assigns, shall pay and distribute the proceeds of the said assigned real and personal estate, in manner and form following, that is to say:

First, to pay and satisfy in full, sundry small personal accounts, due from the said Isaac Phillips, not exceeding eight hundred dollars, and bills of the same character due from the said Joseph L. Moss, not exceeding eight hundred dollars.

Secondly, to pay and discharge in full, to John Moss, Esquire, the full amount of his responsibilities, incurred by reason of his endorsements as sterling bills of exchange to take up drafts of Victor David, of New Orleans, and others, which said endorsements were so made by the said John Moss, subsequent to the suspension of payment by the said R. & I. Phillips, not exceeding three thousand pounds sterling, with all damages, interest, and expenses on said bills.

Thirdly, to pay and satisfy to the said parties of the second part, the full amount of a certain judgment recovered by the Planters' Bank of Georgia, against the said R. & I. Phillips, for the payment of which they, the said parties of the second part, have become sureties.

Fourthly, to pay and satisfy in full to Thomas Dunlap, of the city of Philadelphia, the sum of five hundred dollars, due and owing to him from the said R. & I. Phillips, for professional legal service antecedent to this assignment.

Fifthly, to pay and satisfy in full to Giovanni Baptista Struppa and Ignacio Struppa, the sum of nine hundred and seventy dollars, being the amount collected for them by the said R. & I. Phillips, under and by virtue of a power of attorney to recover a legacy due to them, the said Struppas, in Italy.

And after paying and discharging in full the foregoing sums to the several persons above named in the order specified, then to pay and satisfy in full all and every the claim and claims of all the other creditors of them, the said R. & I. Phillips, if the balance of the said estate assigned shall prove sufficient so to do; and if it shall not prove so sufficient, then rateably and in proportion; who shall, if resident in the United States, on or before the twenty-first day of August in the present year, at twelve o'clock, noon; and if

resident in Europe, on or before the twentieth day of October, in the present year, at twelve o'clock, noon, execute and deliver to the said R. & I. Phillips, a full, valid, and general release of their several and respective claims and demands against them, the said R. & I. Phillips; and for the better and more easy getting in and receiving of all the debts, sum and sums of money now due and owing to the said R. & I. Phillips, and for the general and effectual execution of trust, the said parties of the first part have made, ordained, constituted, and appointed, and by these presents do make, ordain, constitute, and appoint, the said parties of the second part, and the survivor of them, his executors and administrators, their true and lawful attornies, irrevocable, in the name of the said parties of the first part, or in their or his own names, or otherwise, but to and for the uses and purposes of this trust, to ask, demand, sue for, recover, have and receive, of and from all and every person and persons in any ways indebted or bound to the said parties of the first part, all and every sum and sums of money by them or him respectively due and owing unto the said parties of the first part; and upon the receipt thereof, or any part thereof, acquittances, or other discharges, to make and give, and in case of need to settle, compromise, and compound for all or any of the said debts, as they or the survivor of them shall deem expedient for the interests of the estate; and also for the purposes aforesaid, an attorney or attornies, one or more, under them, to appoint and again at pleasure to revoke and re-appoint, and to do and perform all and every such further and other reasonable act or acts, thing or things, as shall be necessary or expedient for the purposes of this trust, hereby ratifying and confirming, and holding for firm and effectual all and whatsoever shall be legally done by their said attornies in the premises, by virtue hereof.

In witness whereof, the said parties have hereunto interchangeably set their hands and seals, the day and year first above written.

IS. PHILLIPS, [L. S.]
JOSEPH L. MOSS, [L. S.]
SARAH PHILLIPS, [L. S.]
JULIA MOSS. [L. S.]

Sealed and delivered in presence of,

(George, on the fourth page, being first written on an erasure.)

THOMAS DUNLAP,
WILLIAM MILNOR.

We, the above mentioned Joseph M. Moss and David Samuel, hereby declare our acceptance of the trust hereby created.

Witness our hands and seals, this twenty-second day of June, A. D. 1837.

J. MORA MOSS, [L. S.]
DAVID SAMUEL. [L. S.]

Sealed and delivered in the presence of us,
THOMAS DUNLAP,
[ ].

PHILADELPHIA CITY, *ss.*

Be it remembered, that on this twenty-second day of June, in the year of our Lord one thousand eight hundred and thirty-seven, before me, the subscriber, one of the aldermen in and for the city of Philadelphia, came the within named Issac Phillips, and Sarah, his wife, Joseph L. Moss, and Julia, his wife, and severally acknowledged the within written indenture as and for their and each of their act and deed; and desired that the same might be recorded as such, according to law; they, the said Sarah and Julia, being of full age, separate and apart from their said *their said* husbands, by me examined, and the full contents thereof made known to them, voluntarily consenting thereto, and declaring that they executed the same of their own free will and accord, without any coercion or compulsion of their said husbands, or either of them.

Witness my hand and seal, the day and year above written.

WILLIAM MILNOR. [L. S.]

Recorded June 22d, 1837.

PHILADELPHIA, *ss.*

I, Samuel H. Fisher, recorder of deeds, &., for the city and County of Philadelphia, do hereby certify the preceding assignment to be a true copy of a certain instrument of writing remaining to be recorded in my office, in deed book of S. H. F., No. page &c.

Witness my hand and seal of office, this 22d of June,
[L. S.] A. D., 1837.
(Signed,) SAMUEL H. FISHER,
Recorder.

D.

Know all men by these presents, that I, Isaac Phillips, of the city of Philadelphia, in consideration of five thousand seven hundred and seven dollars, to me in hand paid by Joseph M. Moss, of the city of Philadelphia, merchant, at and before the sealing and de-

livery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain and sell, unto the said Joseph M. Moss, all the household furniture, goods and chattels whatsoever, in the annexed schedule mentioned, now remaining and being in the house I occupy, on the south side of Arch street, near Broad street, in the said city: to have and to hold all and singular, the said household furniture, goods and chattels, and every of them, unto the said Joseph M. Moss, his executors, administrators and assigns forever, to and for his own proper use and benefit; and I, the said Isaac Phillips, my heirs, executors and administrators, the said furniture, goods and chattels, hereby bargained and sold, will and shall forever warrant and defend, against all persons whomsoever.

In witness whereof, I have hereunto set my hand and seal, this third day of June, in the year of our Lord, one thousand eight hundred and thirty-seven.

ISAAC PHILLIPS. [L. S.]

Sealed and delivered, and the possession of the said chattles delivered to the said Joseph M. Moss, in presence of us,

THOMAS DUNLAP,
JOHN R. WELSH.

1 Parlor carpet,	$70 00
2 Chamber do.	30 00
1 Sideboard,	20 00
24 Chairs,	100 00
4 Chamber looking-glasses,	50 00
4 Tables,	50 00
2 Bedsteads,	40 00
3 do.,	20 00
Glass and china,	50 00
Piano forte,	150 00
2 Pier tables,	30 00
Sundry chamber furniture,	20 00
Book case,	60 00
Sofas,	30 00
Kitchen furniture,	40 00
Sundries silver,	100 00
	$860 00

E.

Bell De Yough & Co., book act.,	$4,406 25
Baker & Moss, do	145 50
Bills payable,	535,809 12
Brown, Joseph, note,	1,942 22
Borie, J. J. do.	6,069 44
Boller, H. do.	3,062 40

Bullock, Davis & Co., note,	$876 44
Boller, William do.	2,438 89
Consignment, drugs,	684 26
do. oil,	1,194 15
Courselli, L. book act.,	25 56
Denckla, A. H. note,	4,855 56
Eustace, J. L. notes,	8,928 77
Exchange in Co. Hermans,	14,547 97
Elms, & Co. Thomas, book act.	644 03
Hagedorn, Leopold & Co., note,	4,183 51
Hulum, Thomas do.	2,000 00
Hupfeld, C. F. note,	364 29
Kentucky bank, book act.,	1,740 66
Lyon, J. Levy, note	3,362 31
Lewis, & Co. do	4,855 56
Lizardi, & Co. F. de book act.,	63,191 00
Levy & Colgate, do.	128 32
Liddard, William do.	252 19
Levy, J. C. do.	1,830 13
McKean, Henry Pratt, notes,	16,584 44
Mustin, J. note,	971 11
Moss, John, book act	851 25
Morris Canal Co. do,	4,034 82
Natt, Thomas, note	1,460 00
Phillips, Isaac, book act.	481 59
Phillips & Sons, Jonas, book act.	125,576 50
Pennsylvania loan, do.	2,700 00
Quicksilver in Co.	3,323 30
Rawlins, S. D. book act.	1,091 52
Rothschilds & Sons, N. M. book act.	25,595 31
Rothschilds, Frères do.	90,562 44
Sharpless, Townsend, note,	971 11
Sartori, L. B. book act.	1,532 81
Suspense, Elmes & Co. book act.	3,075 95
Tiranti, H. L. do.	994 23
Thonspecken, note,	236 66
United States, do.	50 12
Wilson & Hallet, book act.,	195 53
H. M. Walker, note,	4,900 00
Wardle, Thomas, note	4,456 79
Wicht, Werner & Co. note,	8,438 89
Weber & Co. G. notes,	20,095 70
Strappa, G. B. book act.	952 67
Henrion, S. note,	849 00
	$987,520 07

IS. PHILLIPS.

C.

Bald Eagle Navigation Co.	$11,294 85
Barrret & Co., Thomas	132,545 06
Bills receivable, sundry promissory notes	123,607 64
Biddle & Co., Thomas	424 42
Cook, William Wallace	208 97
Camels hair,	147 65
Clark, Jacob	20 00
Cash in bank,	271 83
Desilver, Thomas & Co.	1,215 08
David Victor,	20,738 06
Eaton, William Jarvis	101 74
Elmira Railroad	250 00
Fryer & Anderson,	30,000 00
Fernandez, H. J.	3,549 03
Freeland, Aaron	801 09
Flemington & Co.	27 71
Gratz, J.	100 00
Gratty, D.	55 75
Grain, importation of	6,346 45
Goodman & Daniels,	26,671 28
Harper H. C. A.	23,281 18
Herman & Co.	228 33
do.	8,834 18
Herman & Sons, Samuel	3,241 52
do.	20,801 52
Hopkins, Nicholas	75 00
Israel, M. E.	141 41
Joseph & Co., J. L. & J.	24,367 32
do.	91,000 00
Levy, J. C.	8,561 60
Louisiana Co.	159 62
Lizardi & Co., M. de	357 04
Lentzinger & Co.,	90 00
Linn & Riché	427 86
Lazarus H.	1,000 00
Loyd, Isaac	79,681 28
Plate glass, importation	411 67
Lot on Chesnut street,	20,000 00
House in 6th street,	38,000 00
House in Front street,	5,000 00
Richards, G. W.	4,900 00
Saint, Daniel	1,000 00
Sherry wine,	373 33
Straw hats,	485 44
Steam Towboat Co.,	500 00
Shipment Turpentine,	507 86

Stern, Julius - - - - -	$100 00
Sartori, S. A. - - - - -	5,088 28
Sayres, Convirse & Co., - - - -	19,119 21
Shipment tobacco, - - - -	1,109 36
Smith, William - - - - -	265 00
Small, R. - - - - -	119 25
Swain, J. L. - - - - -	1,500 00
Smith & Brown, - - - - -	3,045 50
Spanish wool, - - - - -	4,713 63
Toby & Co., Thomas, - - - -	1,967 06
Welsh, J. R., - - - - -	514 17
Wardle & Co., - - - - -	2,469 67
Household furniture, - - - -	6,000 00
Goods in New York which passed under assignment, March 22, 1837, - - - - -	168,345 00
	$906,158 90

IS. PHILLIPS.

E.

Bills payable—Detailed.

Acceptance of sundry bills drawn by	Thomas Barrett & Co.,	$177,500 00
Ditto,	Daniels & Goodman,	26,671 28
Ditto,	David, Victor,	20,000 00
Our note, favour Desilver,	Thomas & Co.,	
	Desilver, Thomas & Co.,	7,642 41
Ditto,	W. D. Lewis, Girard Bank,	20,000 00
Ditto,	James Barron & Co.,	1,930 00
Ditto,	J. K. Eyre,	414 06
Ditto,	Fryer & Anderson,	38,896 89
Ditto,	Hagedorn, Leopold & Co.,	1,926 29
Ditto,	Isaac S. Loyd,	118,056 50
Ditto,	Linn & Riché,	1,253 95
Ditto,	Lapsley, J. B.,	773 98
Ditto,	Moss, J. M.,	1,500 00
Ditto,	New Castle Manfu'rs Co'y,	6,292 66
Ditto,	G. R. Smith,	1,817 63
Ditto,	Smith & Brown,	2,916 07
Ditto,	J. L. Swain,	1,455 00
Ditto,	S. F. Smith,	600 00
Our acceptance sundry loans, drawn by	John H. Eustace,	46,975 47
Ditto,	Herman & Sons,	2,402 45
Ditto,	J. L. & S. Joseph & Co.,	11,000 00

Our acceptance sundry loans, drawn by		
	Sayres, Converse & Co.,	$16,242 12
Ditto,	V. A. Sartori,	1,934 10
Ditto,	J. C. Levy,	29,608 26
	Dollars	535,809 12

C.

Bills receivable detailed.

J. L. & S. Joseph & Co. notes for	$57,671 43
Jackson, Riddle & Co., acceptance,	445 25
Samuel Herman & Sons, dft.,	2,030 45
Isaac M. Moss, notes,	1,500 00
J. D. & A. D. Buck,	1,170 67
J. P. Flagg,	933 67
Chapron & Nidelet, notes,	419 18
Richard Oakley, ditto,	323 00
Fryer & Anderson,	2,645 95
William Wood & Co.,	298 30
J. & W. Penfold & Co.,	172 12
Isaac S. Loyd,	400 00
John P. Flagg,	1,867 35
Kilborn & Co.,	1,264 50
S. G. Taylor & Co.,	1,034 86
Crandell & Co.,	595 04
R. S. Dentry,	200 00
L. J. Levy,	3,246 43
J. S. Mitchell,	272 22
William Halsey & Co.,	1,588 86
Delano & Whitney,	274 44
Haviland & Co.,	310 14
Charles Freeman,	1,181 48
H. M & B. B. Hart,	847 50
George Burrell,	1,863 80
Edward C. Riddle,	9,092 32
Vansyckell & Randall,	134 46
William Berger,	475 47
See & Remington,	2,588 58
Francis R. Rhodes & Co.,	18,221 05
C. F. Raymond & Co.,	1,000 00
Charles Squire,	710 00
George Coggill & Sons,	184 62
Reaugh & Douglass,	2,818 41
W. & L. Fry,	395 06
J. Evans & Co.,	2,507 76
J. J. & F. Trippe,	696 98

J. H. Cary & Co., - - - - -	$900 00
Charles Barney, - - - - -	900 00
W. C. & F. Webb, - - - -	426 25
	$123,607 64

E.

Liabilities by Endorsements.

To the Girard Bank, Joseph & Co. notes discounted		$78,000 00
Jackson & Riddle's,		4,040 60
To the Philadelphia Bank,		
Jackson & Riddle discounted,		3,045 67
To the United States Bank, Samuel Comly, dis'd,		$2,302 52
Joseph & Co., do.,		11,000 00
Our bills on Sydney Warwick, London,	£9,498 08 07	
Endorsement on Joseph & Co.'s bills on N. M. Rothschilds & Sons, London,	20,000 00 00	
To James Fassitt & Co., endorsement of Joseph & Co. bill, - - -	3,000 00 00	
To Wicht, Werner & Co., do. do.,	1,600 00 00	
To H. M. Walker, endorsement on bills	3,002 05 02	
To Hobson, Sons & Co., do. do.,	2,400 00 00	
To F. de Lizardi & Co., Barrett's bills endorsed, - - - -	6,597 14 10	
Do. do. J. H. Eustace,	7,886 12 01	
	£53,985 08 00	
To John H. Eustace, Joseph & Co. notes discounted,		$4,465 00
To John Moss for his endorsements of bills in England forwarded by Victor David, -	£3,000	
Bills in England for which no value is received, and their fate unknown, favor H. P. McKean, - -	£18,000	
Nicholas Hopkins, -	1,000	
C. & F. King, - -	1,000	
J. Gratz, - - -	1,500	
J. R. Welsh, - -	100	
Wm. Wallace Cook, -	1,475	
	£23,075	

IS. PHILLIPS.

E.

In the following cases judgments have been obtained; these are included in the list of creditors:

Charles McAlester, Houston & Co., G. Loewig, V. Ehornam, John Welsh, De Lizardi & Co., T. Natt, Desilver, Thomas & Co., H. M. Walker, Planters' & Mech's Bank of S. C., Catherwood, Rothschild,	*vs.* R. & I. Phillips.

These judgments are all in the district court for the city and county of Philadelphia.

IS. PHILLIPS.

Whereupon, it was ordered by the said court, that he give notice to his respective creditors to appear at the court-house, in said city, on the eighteenth day of October, instant, to show cause, if any they have, why he should not receive the benefit of the provisions of the said acts of Assembly. And he having appeared before the said court on the said eighteenth day of October, pursuant to the order of said court, when his aforesaid application was opposed by Troubat, for Henrion, and Keemle, for Loering, which opposition was on the nineteenth day of October, 1837, withdrawn, (said application being adjourned to that day,) and it appearing on the day last aforesaid, that he had given public notice in the Pennsylvania Inquirer and Pennsylvanian, two daily newspapers, published in the city of Philadelphia, to the several creditors of the said petitioner mentioned, and marked in the list exhibited with the said petition, notifying the said creditors of the time and place appointed by the said court, for proceeding upon the said petition; and the court having examined into the matter of the said petition, and no cause being shown why the prayer of the petitioner should not be granted, he took the oath prescribed by law for the relief of insolvent debtors. And he having been directed by the court to make an assignment of all his estate, real and personal, in trust, for the use and benefit of all his creditors, to G. Weber and H. Pratt McKean, he, the said Isaac Phillips, was discharged.

And it was thereupon ordered by the said court, that the said petitioner shall not, at any time thereafter, be liable to imprisonment, by reason of any judgment or decree obtained for payment

of money only, or for any debt, damage, cost, sum or sums of money, contracted, accrued, occasioned, owing, or becoming due before the time of such assignment.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, at Philadelphia, this [L. S.] twenty-fifth day of September, anno Domini one thousand eight hundred and thirty-eight.

ROBT. MORRIS, *Prothonotary.*

PENNSYLVANIA,
Philadelphia County, ss.

I, Edward King, Esq., President of the first Judicial District of Pennsylvania, and Presiding Judge of the Court of Common Pleas, Orphans' Court, and Court of General Quarter Sessions of the peace, for the County of Philadelphia, do certify, that the foregoing record, certificate and attestation, made by Robert Morris, Esq., Prothonotary of the said court of common pleas, whose name is thereto subscribed, and seal of office affixed, are in due form, and made by the proper officer.

In testimony whereof, I have hereunto set my hand, the twenty-fifth day of September, eighteen hundred and thirty-eight.

EDWARD KING,
President Judge, 1st Dist. of Penns., &c. &c.

PHILADELPHIA CITY AND COUNTY, *ss.*

I, Robert Morris, Esq., Prothonotary of the Court of Common Pleas for the County of Philadelphia, do certify, that the Honourable Edward King, Esq., by whom the foregoing attestation is made, whose name is thereto subscribed, was at the time of making thereof, and still is, President Judge of the first judicial district of Pennsylvania, and Presiding Judge of the court of common pleas, Orphan's court and court of general quarter sessions of the peace, for the County of Philadelphia, duly commissioned and sworn, to all whose acts as such full faith and credit are and ought to be given, as well in courts of judicature as elsewhere.

In testimony whereof, I have hereunto set my hand and [L. S.] affixed the seal of the said court, the twenty-fifth day of September, eighteen hundred and thirty-eight.

ROBT. MORRIS,
Prothonotary.

The charge of the court in the case of Lessee of Eustace, vs. R. & I. Phillips, &c., delivered by Judge Baldwin in the Circuit Court of the United States, Eastern District of Pennsylvania. Present, Judges Baldwin and Hopkinson. November, 1840.

United States Circuit Court, Eastern District, Penna., before Judges Baldwin and Hopkinson.

LESSEE OF EUSTACE,
vs.
W. R. HANSON, ISAAC PHILLIPS, JOSEPH L. MOSS, AND DAVID SAMUEL, AND JOS. MORA MOSS. } October Sess., 1839. No. 19.

The above suit was in ejectment, and brought to recover possession of certain real estate, in the City of Philadelphia, to wit: The American House, on the west side of South Sixth street, below High, and a large lot on the north side of Chesnut street, near Schuylkill Seventh.

On 12th November, 1840, after a trial, which had occupied from the 28th October, 1840, his Honor Judge Baldwin, (present also Hopkinson, J.,) charged the Jury as follows:

Charge of the Court.

LESSEE OF EUSTACE,
vs.
HANSON et al.

This is an action brought to recover possession of two pieces of ground in this city the right of possession to which the plaintiff alleges is in himself, in virtue of a judgment against Joseph L. Moss and Isaac Phillips, trading under the firm of R. & I. Phillips, and a regular train of judicial proceedings, terminating in a sheriff's sale, and a conveyance to the plaintiff duly acknowledged. To the validity of these proceedings, no objection has been made, on account of the want of a compliance with all the requisites of the law, to consummate and validate a sale by the sheriff; any legal title, therefore, which was vested in either Joseph L. Moss, or Isaac Phillips, at the time of the judgment, has been conveyed to the plaintiff, as fully and with the same effect in law, as if they and their wives had executed their deed for the property, with all the solemnities required by law. It is now too late to make any objections to the regularity of the sheriff's sale, or to the price at which the plaintiff purchased. The acknowledgment of the deed, before the court which issued the process ordering the sale, has covered all defects in the proceedings; it was for that court to judge of the fairness of the sale, as well as of every matter affecting its validity. They have judicially sanctioned it by receiving the acknowledgment of the sheriff's deed, which is in effect the judgment of the court, reversible only on a writ of error to the Supreme Court. You will, therefore, dismiss from your consideration, all which you have heard relative to the speculating, gambling nature of the plaintiff's conduct and purchase; the law gives him an undoubted right to

assert his claim by lawful means, and while he acts within the law and fairly, his rights are not impaired by the low price *at* a purchase at public sale; on a competition among the bidders, he was the best; and if the price paid was small or even nominal, it was because no one would give more for the right which was sold. In contests, which arise between the creditors of insolvent debtors, who have made a voluntary assignment of their property, they stand at arm's length towards each other, in an hostile attitude; each creditor may accept or reject the conditions of the assignment—each has an equal right to judge of its validity, or whether it is most for his interest to come in under, or endeavour to invalidate it. When it is attached by a non-assenting creditor, who pursues the property of a debtor by legal process, in order to recover his debts, a public sale of the property seized becomes indispensable, the price at which it sells depends on the opinion of the persons present, whether the assignment is void or valid, and the property is sacrificed, or brings its value accordingly. But every purchaser at such sale, whether the plaintiff in the judgment, or a stranger, is entitled to the interposition of a court of law or equity, according to the nature and circumstances of the case, in order to decide whether the property passed by the assignment or not; if the consequence is a loss to the debtor and creditors, who assent to the assignment, it results from its invalidity, and the party on whose side the law and equity are found, is in nowise responsible for it, legally or morally. You will then look solely to the law and evidence in the case, in order to ascertain in whom the right of possession to the property in controversy is vested; in doing which, you will look to the several parties before you—who they are—how they stand towards the plaintiff, and their respective rights.

Mr. Joseph L. Moss and Isaac Phillips, the defendants in the judgment, have been divested of all their interest, either by their voluntary assignment in June, 1837, and the proceedings under the insolvent act in October following, or the sheriff's sale in May, 1839. They can set up no title adverse to the plaintiff, and though the assignment in June may be perfectly valid, they have no right to retain possession, unless, perhaps, with the assent of the assignees, under their title, as distinct from theirs. Mr. Joseph M. Moss and David Samuel have no legal estate in the property; their deed to M. Hanson divested their interest in May, 1839; they have, therefore, in themselves, no right to retain possession; though, if they are in possession, they may defend under the assignment, and the title of M. Hanson, as a purchaser from them, unless such privity exists between them and the defendants in the judgment, as prevents them from setting up an outstanding title—a question, which is not very important in this case, and might rather tend to make it more complicated than is necessary, by discussion.

M. Hanson is the party in interest—he has the possession of the property in controversy, and if he fills the character he assumes, has a right to contest the title of the plaintiff in every respect. You will consider him as having severed his defence from that of the other defendants, and assuming a position in his own right, on which he may stand, though their defence must fall; the grounds taken by him, go to every assailable point in the plaintiff's title, from whatever source—to every point of defence which can be taken by any other defendant, with the additional rights which his asserted character gives him; so that if his possession cannot be supported, that of the others cannot be rightful. In deciding, therefore, between the plaintiff and M. Hanson, the whole merits of this controversy will be determined—if we have jurisdiction of the case as a court of law, which is the first question to be considered.

It has been objected, that, inasmuch as M. Hanson claims, by deeds recorded—which on their face purport to be fair and perfect—they cannot be assailed on any extrinsic ground; and that, if the assignment by Joseph L. Moss and Isaac Phillips is fraudulent as to the creditors, who have not assented to it, the plaintiff's only remedy is in a court of equity. To this objection, an answer is found in the principles of the law, which have become so well established, that it was not without some surprise that we listened to the bold proposition, that a jury is not the proper tribunal, under our system of Federal Jurisprudence, to decide on questions of fraud, whether in deeds, or contracts of every description. If the law had not been settled, we should hold that on the soundest principles of justice and right, a jury is not only a proper, but the only proper tribunal to decide on what acts or conduct of a party the imputation of actual fraud should be stamped, and whether such facts appeared in evidence as justified it.

Fraud is of two kinds; fraud in fact, consisting in a dishonest or corrupt design or intention to injure another, depending not simply on the act done or committed, but in the act coupled with the intention, which is peculiarly appropriate to a jury. Fraud in law is where an act is deemed fraudulent without inquiring into the intention, which is a matter for the court; but whether fraud in fact, or fraud in law, is set up to invalidate any deed or contract, on the ground that it defrauds creditors, a court of law has undoubted jurisdiction to hear and determine the case, unless there is some matter which belongs exclusively to courts of equity, which cannot be well asserted in this case. If any doubt exists, it is whether a court of equity would have any jurisdiction in a case where a court of law is fully competent to act upon the case in all its bearings, and to administer a full, adequate, and complete remedy. It has, indeed, been considered, that the jurisdiction is concurrent in both courts, in cases of fraud, in favor of which position there has been of late years a strong inclination

of the profession and courts. But it may well be doubted, whether the cases have not been confounded, by overlooking the distinction between that species of fraud, which is cognizable alone in equity, under some appropriate head of its peculiar jurisdiction, and that fraud, over which courts of law have, from the earliest period, exercised an incontestable jurisdiction. It is, however, not necessary to trouble you with any labored investigation on this subject, as the law which must govern this case is the statute and common law of England, adopted in this State from its first settlement. It has been uniformly administered by the intervention of a jury, and though we might be justified by late precedents and judicial authority in taking cognizance of this case, sitting in equity without a jury, it would be rather in deference to the opinions of others, than in accordance with our own. The trial by jury is one of the most invaluable of our institutions—it is dear to the people—it ought to be preserved inviolate by courts, and we have always felt inclined in a doubtful case to follow the ancient landmarks of the law and constitution, rather than modern improvements upon either, which tend to taking jurisdiction of cases appropriate to jury trials, by any tribunal that, by its own authority, decides fact as well as law. In such a case as this, we should act without the aid of a jury, only in obedience to the mandate of a higher power.

It is farther objected to the plaintiff's right, that having accepted a judgment, subject to the discharge of the defendants under the insolvent law, he took it, subject to all its incidents and effects, whereby he can come upon the property of the debtors only as a general creditor, on an equal footing with all others, through the intervention of the trustees, or in their name. This is, however, not the true construction of the agreement; it means that by confessing judgment, the defendant waived no rights or exemptions, which accrued to him by the discharge; it left him free to claim freedom from arrest on any process on the judgment, or any other right secured by the law; but it left the plaintiff at liberty to pursue any property which had belonged to the defendants, by a proceeding adversary to a purchaser under him, or any assenting creditor. If, notwithstanding any previous assignment, either voluntary or under the insolvent law, there was any property to which his judgment could attach, there was nothing in the assignment or its legal effects which prevents the plaintiff from pursuing it by legal process, till by its consummation by a sheriff's sale and deed acknowledged, he put himself in a position to assert his pretensions in a court of law, or which could, in any manner, compel him to come in under either assignment, or lose his debt.

As a judgment creditor, he might contest with the assignees under the voluntary assignment, the validity of their title, or that of any person claiming under them, or the right of the trustees

under the insolvent assignment; and if he could defeat the right thus claimed, the property was open to his claim, if he could establish it. In endeavoring to do so by this suit, we think he is not acting inconsistently with the terms on which the judgment was confessed; the defendants disclaim all interest in the property from the time of their first assignment, and are, therefore, not competent to question the plaintiff's right to try title with others. On a contrary construction, he would be compelled to acquiesce in the exclusion from the benefits under the assignment, by not having released in time; or if it was inoperative, to come in only as a general creditor for his rateable proportion of the available effects of the insolvents. We think this objection is not sustained.

It is next objected, that the plaintiff is precluded from contesting the validity of the assignment of June, 1837, by having filed a bill in equity, admitting its effect, and claiming under it, on the same principle which binds a creditor who takes his dividend under it. That principle is undoubtedly a sound one, but we cannot perceive its application to this case.

The bill states the fact of an assignment—its acceptance by the assignees—their action under it, with the consequences of such action on the equitable rights of the plaintiff; without affirming or denying the legal efficacy of the assignment, he alleges that the assignees have made, or are about to make a disposition of certain specified notes, in violation of an agreement between the plaintiff and the assignees, prejudicial to his interest and rights. He asks the court to interfere, for the purpose of protecting him from the effects of the assignment, to prevent the assignees from diverting the notes or their proceeds from the purposes agreed upon by the assignors before the assignment; he avers this agreement to be binding on the assignees, who are not authorized, on principles of equity, to apply this fund to the purposes of the assignment. It is consequently a disaffirmance of the terms and conditions prescribed by the assignors—a claim to the whole of the notes and proceeds, for his own sole benefit, in opposition to the claims of every other creditor. The whole bill is founded on the equitable obligation and duty of the assignees to apply this portion of the assigned effects, contrary to the express terms of the assignment, on the ground that for the causes alleged, the law of equity controls its effect, and must regulate their distribution of the funds. On these principles the equitable claim of the plaintiff to this portion of the personal property assigned, is as adverse to the assignment as his legal claim to the real estate in controversy. The difference between the two claims is this: in the bill in equity the plaintiff avers the delivery of the notes to the assignees—that they were payable to, and endorsed by Robert and Isaac Phillips—that having then come to their hands, his remedy to recover possession of the unpaid notes, or the proceeds of those which are paid, is in

equity. Whether his remedy is at law or in equity, is for the court, before whom the bill is pending, to decide; the object of a suit in either court would be the same; the question in both must be—in whom is the right to the notes or their proceeds—as it is in this case, in whom is the right of possession to the real estate? In the one case the validity of the assignment in passing the right to these notes to the creditors under the assignment, is as much contested by the plaintiff as it is in the other; the fact of an assignment is admitted in both, but the plaintiff takes different modes of avoiding its effects.

Having accepted and acted in execution of the trust, the assignees cannot deny the validity of the assignment; the law places their action under the supervision of a court, to whom the plaintiff applies for the application of a specific fund to his exclusive benefit, notwithstanding the contrary application by the assignees, under the requisitions of the assignment.

Had the plaintiff resorted to a court of equity for a remedy as to the land in controversy, in virtue of his sheriff's deed, he *he* must have stated his case, as he has done in his bill in equity in relation to the notes, praying for a reconveyance of what was not sold, an account for, and payment of what had been sold, on the ground that the property did not pass in equity by the assignment, and that, in the hands of the assignees, it remained subject to his paramount right as a creditor attempted to be defrauded by it. Broader ground might be taken in the latter than in the former case; the plaintiff might rest his claim to the notes, on the principles of equity implanted in his case, without an allegation of fraud in fact, while he might put his claim to the land on every ground of fact, law, and equity, which his case covered; but when his object is to paralyze the assignment, either as to the notes or land, he cannot be held to affirm or claim under it.

So long as he claims adversely to the terms and conditions upon which the assignees must act pursuant to the assignment, he may, according to the nature of his case, apply to a court of equity, to compel them to execute the trust, according to their legal and equitable obligations; or apply to a court of law, on the ground that the assignment passed no legal right to personal or real property. In resorting to a court of equity in one case, and a court of law in the other, the plaintiff is at liberty to choose his ground in affirming, or disaffirming the legal effect of the assignment in creating a trust. The assignees are precluded from a choice—they have fastened on themselves a trust, either for the assenting or dissenting creditors, which the appropriate court will carry into execution, according to its settled principle. As the trust may be a legal or equitable one, its execution is enforced at law or in equity; as to one portion of the assigned property, the proper remedy may be at law, and as to the other, in equity; yet the pursuit of one can be no bar to the other, unless the grounds respectively assumed

are wholly incompatible. A creditor who asks for such an execution of a trust as puts him in the same situation as if a trust never existed, and defeats the objects intended to be effected by the creation of the trust, by directing the subject of the trust from those for whom it was designed to himself, cannot be said to claim a benefit from the trust, or to affirm what he disaffirms. By pursuing this course, he gives up no right which he could assert at law, by invalidating the instrument creating the trust—his objects are the same; the results of a decree in equity, or a judgment at law, are the same, when his rights are established to the same extent as they existed before the assignment, or as if it had never been made. Should the plaintiff obtain a decree in his favor, as to the notes and their proceeds, he thus far annuls the assignment, that it no longer impairs his rights, and is used by a court of equity as the mere instrument for the purposes of justice, and a conduit to the equitable jurisdiction which it exercises over the trustee. Should he obtain a judgment at law, an execution gives him all the fruits of a decree in equity—the different modes of proceeding being but the varied means of effecting the same object. We are, therefore, of opinion, that the filing and pending of the plaintiff's bill in equity does not, in law, impair his rights to proceed by ejectment to recover the property now in dispute, any more than bringing and prosecuting the present action would prevent him from prosecuting his bill in equity. This objection must consequently fail. Another objection to our entering on an investigation of this case, is founded on the decisions of the Supreme Court of this State, in the case of Fassit *vs.* Phillips, which it is said established the validity of this assignment, and is obligatory on this court, on the principles which it has adopted and acted on uniformly. We cannot so view it. That was a bill in equity, praying for an injunction against any proceedings under the assignment, on account of its invalidity for the causes set forth in the bill, being acts of alleged fraud on the part of Joseph L. Moss, one of the assignors; an injunction was granted, but on the coming in of the answer, there appeared a positive denial of fraud, and of every fact on which the equity of the plaintiff depended. A motion to dissolve the injunction was made and heard on the bill and answer alone; the court dissolved the injunction, the only effect of which was, that assuming the answer to be true, as the court were bound to do in the then state of the case, all action upon it was suspended till evidence was taken, and the cause came to a final hearing, when it will be competent for the plaintiff to disprove the answer, and support the allegations of his bill. In the mean time, the merits of the cause remain as open as before; the injunction was granted on the prima facie case stated in the bill and exhibits, but as the whole equity of the plaintiff was denied, the prima facie case was rebutted, whereby the parties now stand as if the court had not acted on the bill; an interlocutory order, in granting an injunction,

or taking it off, has no effect on the rights of either party at the hearing. The facts set up or denied in the answer, can neither be considered as established or negatived; for the purposes of the motion to dissolve the injunction, the answer was taken as true; it has performed its office, leaving its future effect dependant, in the opinion of the court, on the effect of opposing evidence on the part of the plaintiff. Had the decisions of the court been made on a hearing of the cause on the pleadings, exhibits and evidence, it would have been entitled to great weight in our mind, and yours, on the facts before them, and perhaps conclusive on matters of law; certainly so, if their decree had been founded on any State law, statute or common, which was local, and not in conflict with the laws of the Union.

It has also been contended, that whatever may be the effect of the assignment of June, 1837, on the rights of the parties, or if it is wholly void, the estate of the assignors passed to the trustees appointed by the court, on the discharge of Moss and Phillips, under the insolvent law of 1836, by the force of the law and the discharge, from the time of the filing the petitions for the benefit of the act, so that there was no interest in the defendant on which the judgment under which the plaintiff claims could attach. If this position is well taken, it takes away all right in either the plaintiff, the assignees, or Mr. Hanson to the property in controversy; for if it is still vested in the trustees for the benefit of all the creditors of the insolvent, without any assignment made by them, then as the trustees have made no conveyance, the plaintiff's judgment was no lien on their rights; and if the assignment of June, 1837, is void, Mr. Hanson has no right.

As this position is founded on the words of the thirty-fourth section of the insolvent act, it becomes necessary to examine its various provisions, in order to ascertain the intention of the Legislature in this particular.

By the 1st section, the courts of common pleas have power to grant relief to insolvent debtors, "on application made in the manner hereinafter provided." Purdon, 508.

Section 2. "The jurisdiction of the said court must be exercised as follows, and not otherwise," viz: "by section 9, the petitioner must present a statement of his estate, effects and property, debts due by him, &c.;" by section 12, he must exhibit a true account of his debts, credits, and estates, and shall satisfy the court that he has neither concealed or conveyed, for his own use, or for any of his family or friends, or whereby to expect any future benefit to him or them, any part of his estate, effects, or credits.

Section 13 directs, that if he shall be entitled to relief, he shall take an oath that he will deliver up, and transfer to his trustees, for the use of his creditors, all his property, debts, rights, and claims, &c.; that he has not given, sold, or intrusted any part of his property, rights or claims, to any person, whereby to defraud

his creditors, or any of them, or to receive or expect any profit, benefit, or advantage thereby.

Section 14. "The petitioner shall thereupon execute an assignment of all his estate, property, and effects whatever," to such trustees as may be nominated by his creditors, or appointed by the court.

Section 15. "When such assignment shall have been executed, the court shall make an order of discharge;" and then follows the 34th section, enacting that, "The trustees appointed as aforesaid, shall be deemed to be invested with all the estate and property of the insolvent, at the time of filing his petition, subject to existing liens, and the trustees shall take possession of such property and estate, and may sue therefor in their own names, as well as for debts and things in action, to which there are these provisoes:— 1st, That no purchase or assignment of real estate in the county, made bona fide for a valuable consideration, before the assignment, to any person not having actual notice of the petition, shall be impeached thereby. 2, Nor if situated out of the county, if so sold or assigned before the recording the assignment in the other county. 3, Nor a sale of personal property to any person, not having actual notice of the petition or assignment. 4, Nor if any person pays a debt, or delivers property to the insolvent, without actual notice, shall he be liable to pay or deliver the same to the trustees.

Section 36. "If any insolvent shall, prior to such assignment, have conveyed any part of his property to his wife and children, or either, or to any one in trust for them, or have conveyed to any other person with intent to defraud creditors, the trustees shall have power to recover and dispose of the same, as fully as if the insolvent had been seised or possessed thereof at the time of the assignment."

From this summary view of the law, it is evident that the legislature intended that an assignment should be made before a discharge; the sections subsequent to the 14th, are predicated on the supposition that it had been made, and their most important provisions will become a dead letter, if none is made, especially the 36th. By referring to the preceding act of 1814, it appears that no assignment was requisite; but as the act of 1836 is an entirely new system, superseding the old, its requisitions cannot be overlooked.

The 14th section is peremptory, that an assignment shall be executed; and the 15th, in terms, makes the discharge dependant on its having been done; the making the estate vest before the assignment, or without one, is restoring the law of 1814, by entirely annulling the provisions of the 14th and 15th sections of the new act, and making it impossible to carry the 36th section into effect by any other construction than substituting petition for assignment. We are aware of no rule or principle of law which justifies such construction by the force of the 34th section; it must be taken in

connection with the other parts of the law, so as to make the system consistent in all its parts, unless its words exclude all construction and reference, which in our opinion they do not; on the contrary, they contain a reference which makes them in perfect harmony with what precedes and follows. Thus, in the 15th section, "the trustees appointed as aforesaid," necessarily refers to the 14th section, by which they became trustees in virtue of the assignment; they are the persons to whom the court direct it to be made, its execution is the prerequisite to a discharge by the very words of the 15th section, and is the only mode in which the petitioner can comply with the oath prescribed in the 13th section.

Had the law used the term assigns, instead of trustees, there could have been no doubt they are the persons to whom the debtor swore he would deliver and transfer all his property, debts, rights and claims, in the 13th section, to whom he was bound to execute an assignment by the 14th, on which alone the court could discharge by the 15th, or give such effect to their order made after the assignment, as declared in the 16th section. They are assignees to all intents and purposes; as such they became trustees; but however named, their character, powers, rights and duties are the same, and were complete without the 34th section, to vest in them the estate of the petitioner at the time of the assignment; but the legislature thought proper to make provision for transfers and conveyances of the estate and effects of the insolvent, between the filing the petition and the execution of the assignment, which was the object of the 34th section, and not to repeal any preceding provision, or to dispense with the assignment.

Hence its true construction is, that the assignment, when made, shall relate to the filing of the petition, so as to cut out all intermediate dispositions by the debtor, except in the cases provided for in the 35th section, which are exceptions to the 34th, by way of a proviso, limiting its effect. Such construction gives effect to the 36th section, according to its words, which it cannot have, if there has been no assignment; while it is in harmony with every preceding provision, as well as in effectuating the intention of the legislature in requiring the execution of an assignment before discharge. We cannot think it the meaning of the law, that a debtor should be discharged who has made no assignment; that there should be trustees who were not assignees, or that the oath of the petitioner need not be complied with, as to the act specially enjoined to be done as the basis of all subsequent action by the court or trustees.

There is another important view which must be taken of this law. In conferring power on the Court of Common Pleas to grant relief, the first section applies only to an application made in the "manner thereafter directed;" the second section directs that the jurisdiction of the courts "may be exercised as follows, and not otherwise;" this section is, consequently, a limitation on jurisdiction, so far as it applies. These words are broad enough to extend to all

the provisions of the law; it is certainly no strained construction to hold, that they apply to those acts which are positively directed to be done, before any subsequent action can be had pursuant to the law; and if such should be its ultimate construction, that the requisites prescribed are matters on which jurisdiction depends, the consequences may be very serious and alarming. We do not mean to say that such is the true inference to be drawn from the records of the law, or desire to be the first to give them a judicial exposition; our duty is to await the course of the courts of the State, and to follow it, unless the exigency of a case requires us to take the lead. We can decide all questions which have arisen under this law, without inquiring into the jurisdiction of the Court of Common Pleas, on the cases of the parties in this case; we can, with perfect consistency, hold that the estate of the insolvent does not pass to the trustees, without an assignment, so as to cut out the lien of a judgment rendered after the discharge, but before an assignment executed; and at the same time hold the judgment, or order of discharge, to be perfectly valid for all the purposes declared by the law. So we take this law as applicable to this case; the omission to make the assignment before the discharge does not impair its effect in protecting the debtor, but it leaves the parties free to assert their respective rights—the plaintiff as a creditor by original right or by assignment, and Mr. Hanson as a purchaser, notwithstanding the provisions of the 34th section. Other considerations tend to the same conclusion. The words of the 34th section are, "all the estate and property of the insolvent, at the time of filing his petition," which cannot apply to the property in question, because the assignment made in June preceding divested the assignors of the whole estate and property, whether it was valid or void, as against creditors. If it was valid, all the right of the assignors passed to the assignees; if it was void as to the creditors, it was good between the parties, and all others, except the creditors who were intended to be defrauded, or whom it might tend to defraud. As to them, and them alone, the assignors are held to be vested in trust, without any other right, or for any other purpose, than making the property subject to debts. So that in any event there was no interest or right which the assignor could pass to the trustees for all the creditors, either by operation of law under the 34th section, or by an assignment under the 14th.

The 34th section provides only for the case of an insolvent having property at the time of his petition, which he had not before conveyed; it is wholly silent as to the case of his having conveyed or assigned to his wife, children, or in trust for them, or to any other person, with intent to defraud creditors; such case is provided for by the 36th section, when the insolvent has made an assignment to trustees previous to his discharge. By making this distinct, substantive provision, the law clearly excludes such conveyance and transfer from the operation of the 34th section; thereby making a clear distinction between the property which had never been trans-

ferred before the discharge, and property which had been so transferred contrary to law. Whether, then, we look to the provisions of the insolvent law in connection, or the words of the 34th section alone, we are fully satisfied that an assignment by the insolvent at some time previous to the discharge, is necessary to vest his estate in the trustees, so as to prevent a subsequent judgment from becoming a lien. This section, then, does not affect the plaintiff's case, as contended by the defendants; the judgment may attach, notwithstanding the discharge, if we assume, as we do at present, that no assignment was made before the 29th September, 1838, after the plaintiff had made a levy; an assignment was then made, and this brings up the construction of the 36th section, which provides that when a conveyance is made prior to such assignment to defraud creditors, the trustees shall have power to recover the estate so conveyed. It follows, that if they do recover it, it must be distributed among all the creditors in the same manner as if the insolvent had been seised or possessed of, at the time of such assignment. So construed, this section would take the property in controversy from Mr. Hanson, as a purchaser under the assignment of June, 1837, however fair his purchase may have been; it is very analagous to the enacting clause of the 13th Eliz., without the aid of the 6th section of that statute; there is no proviso to except a purchaser for valuable consideration without notice of the fraud between the assignors and assignees. There is, indeed, no declaration in terms, that the fraudulent conveyance shall be void, but it is done in effect by declaring that the trustees may recover and dispose of what has been so conveyed, "as fully and effectually" as if the insolvent had actually been seised at the time of the assignment, which to all intents and purposes, annuls the fraudulent conveyance, and takes the estate from a purchaser under it, as would the 13th Eliz., but for the exception in the 6th section.

Literally construed, it would also destroy the lien of plaintiff's judgment, and any right founded on it, other than his rateable proportion of the general effects of the insolvent; giving it this effect, the 36th section would supercede the 13th Eliz., the common law on which it is founded, and deprive the creditor, who was attempted to be defrauded, of rights which have been unquestioned for two hundred and seventy years. It has never been doubted, that a creditor who takes measures for avoiding a fraudulent conveyance of real or personal property, by levying on and buying it under his judgment, or a stranger who is such purchaser, shall hold and enjoy the property for his own use; and we cannot believe it was intended by the act of 1836 to uproot the whole system of jurisprudence which has grown out of the 13th El., or that it is the fair construction of the provisions of the 36th section. In our opinion, they apply to a case where no creditor having previously acquired a lien or right to property fraudulently conveyed, the trustees proceed to invalidate the conveyance; and that it does not apply where the property is in the hands of a bona fide purchaser for

valuable consideration, without notice of the fraud before the assignment made by the insolvent. We will not be the first to so construe a State law, which will produce the most mischievous effects on a long settled system of jurisprudence.

We have been asked to consider the assignment as having been made before the discharge, but the insolvent record shows the contrary—it shows the form drawn up, unsigned, and without date, the actual execution by the order of the court on the 29th of September, 1838, as of that date, together with the refusal of the court to give it a retrospective effect to the time of the discharge or petition. This was the proper course to pursue, leaving it to be thereafter decided what was the legal effect of the proceeding, when it should be brought in question.

There are cases where a court may order that an act be done presently, and to take effect as if done before, but the cases are few; the power is a delicate one, which ought to be used with extreme caution, so as to do no injustice to third persons, or in any way prejudice their rights; when it is intended to be exercised, it should be done in clear terms, and an entry thereof made of record—it is even then viewed with much jealousy, and is never favoured—vide 2 Pet. 521, &c. In this case it may well be doubted whether the Court of Common Pleas could give to an assignment actually made in September, 1838, the effect of taking away the lien of a judgment rendered in January preceding, and which the judgment creditor had followed up by a levy, while the assignment remained unexecuted; that court very properly refused to make such order, and this court will not consider that as having been done, which was not intended, and ought not to have been done. 2 Pet. 522—3.

Having disposed of these objections, we now proceed to another, which was much pressed during the trial—that the plaintiff had not shown a legal title to the property in controversy, so as to enable him to recover in this action. As this objection presents questions of fact, as well as of law, we must refer to the evidence of title, which has been exhibited by the plaintiff, as direct proof of its being in him in virtue of the sheriff's sale, together with the principles of law by which the evidence must be applied.

A legal title is the right to real estate, derived from the original owner of the soil, and passed to the party claiming it by deed, will, descent or legal process operating as a deed by force of a law.

An equitable title is one acquired without a regular deed or formal conveyance of any description, which a Court of Law considers as a transfer of the estate of one to another; but a title so acquired, as in equity, justice and good conscience to vest the beneficial interest—the real and substantial ownership of the property—in the person claiming it. In such a case, a Court of Equity, whose appropriate and peculiar jurisdiction is to act upon the conscience of the person who holds the formal or legal title to the property, com-

pels him to convey it to the person to whom he is bound in good conscience to make a complete title, thus uniting form to substance.

As when B sells to A, for a price which is paid by A, who takes possession and makes valuable improvements, but B holds the title, and refuses or neglects to make a deed, A is the real owner in equity, but B is the owner in law, and the contract of purchase is by the most solemn articles of agreement under seal, with covenants to make a deed on payment of the purchase money. B may turn A out of possession by ejectment in a court of law, because such courts cannot recognize merely equitable titles. But a court of equity would prevent B from following up his legal right, and order him to convey it; such is the course and settled rule of this court, though in the courts of this State, A might successfully defend himself in an ejectment. State courts act in the same case and at the same time, as a court both of law and equity, which we cannot do, as the courts of the United States are, by the constitution and laws, organized on common law principles; and though we have full common law and equity jurisdiction, we must exercise it in distinct capacities, as judges or chancellors, as the nature of the case may require.

There are, however, cases where a court of law will not inquire whether the title of a plaintiff is legal or equitable; a tenant will not be allowed to dispute the title of his landlord while he holds under him; a defendant in a judgment cannot contest the title of one who holds a sheriff's deed under a sale on the judgment, nor any person who holds possession under them, by priority arising after the judgment; in all such cases the plaintiff will recover possession, so that this objection cannot be made by Mr. Joseph L. Moss or Isaac Phillips.

So where both parties claim under the same title, neither is bound to trace theirs beyond the common source, or to show any other right than what appears there; the court will not inquire whether such title is legal or equitable. The right of possession depends on the question—in which party the title is invested. Thus in the present case, both parties claim the right of possession to the Chesnut street lot, under George Thompson's deed to Isaac Phillips. It is, therefore, not necessary for the plaintiff to show the nature of the title of Thompson, or to trace it through the title deeds to the first owner; the only contest between the parties being—to whom the right conveyed to Philips has passed—and neither can call on the other for the exhibition of any other title than that under which both assert the right of possession. As to the house in Sixth street, the case may be different, if the assignees have any claim to it, by any other than the title of J. L. Moss and Isaac Philips, or Mr. Hanson is clothed with the character he assumes, or claims by a title adverse or independent. He has assumed the position of a bona fide purchaser, for a valuable consideration, without such notice as the law requires; if this position is well taken, Mr. Joseph

M. Moss and David Samuel can have no interest in either piece of property, or be actors in the suit in opposition to the plaintiff in any other than a derivation right as before stated.

Claiming under the assignment of June, 1837, under the Orphans' Court sale, or under Mr. Hanson as a purchaser from them, their possession, if they had any, on the service of the writ, must be rightful or wrongful, as the case may be in evidence; it is, however, clear, that in their own right, by the assignment, they cannot controvert the title of Isaac Philips and Joseph L. Moss, or call on the plaintiff to produce any other. Whether they do claim under the orphan's court sale, how or what they do or can claim by it, will be considered hereafter; any claim they can have under Mr. Hanson, depends on the nature of his title, and how he has a a right to claim, and does claim the property.

If he is clothed with the character he assumes, that of a purchaser of the title of Robert Philips, in virtue of the orphan's court proceedings, the deed of Isaac Philips to the assignees, and theirs to him, by a right adverse to the title of the assignees, as conveyed by the assignment, Mr. Hanson may rely on it in opposition to the equitable right of the assignors, as a distinct, independent right, passing to him in virtue of the judicial proceedings, and not in virtue of the assignment. But if he does not stand as the purchaser of an adverse title, but claims under the assignment, through the deed of the assignees founded upon it, he cannot contest the title of the assignors, even if he assumes another position as a purchaser, which is this: a purchaser from the assignees, bona fide, for a valuable consideration, without any notice of any fraud in the assignment. Conceding for the present, that in this position he might hold the property, though the assignment was fraudulent, he neither need, or could contest the title under which he claimed; for such as it was, his purchase would protect him from all the consequences of fraud between the assignors and assignees, unless it was affected by the plaintiff's judgment and proceedings upon it.

The only position, therefore, in which Mr. Hanson can set up a title adverse to that of J. L. Moss and Isaac Philips, or call on the plaintiff for any other, is as a purchaser under the orphan's court sale; considering him at present as so standing, the present question for consideration is, whether the legal title of the Sixth street lot was in the heirs of Robert Philips, or in Joseph L. Moss and Isaac Philips, as the firm of R. & I. Philips, at the time of the judgment in January, 1838.

The plaintiff may show a legal title, without producing a deed from Robert Philips to R. & I. Philips; being a purchaser at sheriff's sale, he is not supposed to have the title papers, or bound to produce, or to account for them; it is sufficient if he can prove that a deed once existed, or if he can prove such facts as will authorize a jury to presume that one had been made, if notice was given to

those in whose possession it is presumed to have been, to produce it at the trial.

In an ordinary case, the jury must decide from the evidence before them, what facts have been proved; but in this case there is one feature which is rather unusual, and to which it is necessary to call your special attention, as a matter which has an important bearing on some of its prominent points. Timely notice was given by the plaintiff's counsel to the counsel of the assignors and assignees, to produce at the trial the books of R. & I. Philips; no objection was made to the competency of the notice—they were called for, but were not produced till the day after the evidence was closed, and at the moment when the court had called on the plaintiff's counsel to address the jury. No reason was assigned for their non-production, save the reference to the illness of Mr. Moss; but Mr. Philips was in court; notice was given to Mr. Hanson, though none was necessary, as the books could not be presumed to be in his possession. That they could have been produced before the evidence on both sides was closed, can scarcely be doubted, when so many were produced afterwards. Their production, then, was no compliance with the notice; the plaintiff could not, without leave of the court, have referred to them; he was not bound to ask it, and had a right to proceed, as if they had not been produced.

Mr. Hanson had a right to call for the books; claiming by an adverse title, he might have moved the court for an order to produce them, but he made no effort to procure them; we say so, because there was no evidence that he did in any way endeavor to have them produced, although the court, in their opinion on the motion for a non-suit, plainly intimated the effect of their non-production.

There has, therefore, been no satisfactory or reasonable ground assigned for their having been kept back, and the plaintiff has a fair case for calling on you to presume, whatever the law will authorize you to presume as to the contents of the books. On this subject the 15th section of the judiciary act has made this provision: "That all the said courts of the United States shall have power, in the trial of actions at law, on motion and due notice thereof being given, to require the parties to produce books or writings in their possession or power, which contain evidence pertinent to the issue, in cases, and under circumstances where they might be compelled to produce the same by the ordinary rules of proceeding in chancery; and if a plaintiff shall fail to comply with such order to produce books or writings, it shall be lawful for the courts, respectively, on motion, to give the like judgment for the defendant, as in cases of non-suit; and if a defendant shall fail to comply with such order to produce books or writings, it shall be lawful for the courts, respectively, on motion as aforesaid, to give judgment against him or her by default." This enables courts of law to apply the same rules and principles, where papers or books

are withheld, as have been adopted by courts of equity, which are these, in our opinion, as long since expressed in Askew v. Odenheimer, 1 Baldwin, Rep. 388–9.

"Where papers are destroyed or suppressed by a party, with a deliberate design to defraud or injure another, the presumptions of law are very strong against him. The mere circumstance of a party having destroyed or suppressed a deed, book, or paper, will not induce a court of equity to decree a penalty against him, to deprive him of what may be his just right, to dispense with such secondary proof of the existence and contents of the paper which has been so suppressed or destroyed, as may be in the power of the party injured to produce, or to give a decree in his favor without some proof. It is difficult to define precisely what will be deemed some proof, as much must necessarily depend on the particular case; but there can be little danger in laying it down as a general rule, that where there is the least positive proof of the existence of a paper, or where it may be supposed or inferred from appearances, out of which such supposition or inference necessarily or naturally rises, proof of spoliation would entitle the opposite party to a decree. (Cooper *vs.* Cooper, 1 p., lb. 750.) If there has been actual spoliation by a party, everything would be presumed against him, in favor of those setting up a prima facie title; and though there is no actual spoliation proved, yet a complete suppression would, for the purposes of the suit, be equal to a spoliation. Bank *vs.* Stewart, 1 Sch. & Lef., 222.

"When a widow made a deed of the greatest part of her estate, to the value of eight hundred pounds, to trustees, for her children by the first husband, which the second husband destroyed, he was decreed to pay the amount without any account of the estate. Hunt *vs.* Mathew, 1 Vern., 408. So when a defendant swore that he had burnt a deed, and afterwards produced it, he was compelled to admit the deed, as laid in the bill. Sampson *vs.* Rampey, 2 Vern., 54. When a defendant, in a bill of equity, swore that she had delivered a will to the plaintiff, which he did not produce, she was held not to be bound to answer till the will was produced by plaintiff; on a final hearing, it was decreed, that having suppressed the will, it ought to be presumed most strongly against him, and to be taken as set forth by the plaintiff claiming under it. Hampdin *vs.* Hampdin, 1 Brener, P. C., 250, 252.

"When a deed limiting a term was burnt by the defendant, who contended that the limitation was void, the court decided, that since a term might be limited in such a manner as to take effect, they would intend it to have been so limited in that case, and decreed a conveyance accordingly. Dalfton *vs.* Coalfworth, 1 P. W., 731–2, &c. So where title deeds are suppressed, the court will decree possession to the party claiming under them till produced; (King *vs.* Hounsdon, Hob. 109; 3 Atk., 360); where, on an account being decreed, the master reported that the defendant had sup-

pressed and embezzled some pages of accounts in a bundle, or that it had been done with his privity, the court disallowed his whole account for diet, &c., on account of embezzlement. Waldour *vs.* Berisford, 1 Vern., 425; 2 P. Wins., 749.

"When a will is suppressed by the executor or heir, he shall be compelled to pay a legacy bequeathed by it before probate, and without a citation in the spiritual court; equity interferes on the head of spoliation and suppression. 3 Atk., 360.

"From these cases, we may take the rules of equity to be well established, that where a deed, or will, or other paper is proved to be destroyed, or suppressed, or there is vehement suspicion of its having been done, the presumption in odium spoliatoris applies in favor of the party who claims under such paper, though the contents are not proved. The fact of spoliation, suppression, or embezzlement, may be proved by the answer or oath of the opposite party; so may the contents of the papers; the same rule applies to matters of account; the mere embezzlement of books, or accounts, is sufficient to authorize a rejection of claims by the spoiler, though supported by evidence; or the party spoiled may rebut the claims by his oath. But when he comes to charge the spoiler in account, in order to raise a debt against him, he must give some evidence beyond the fact of spoliation; his oath would be admissible evidence, its effect depending on the circumstances of the case. If he relies on other evidence, he must take out a prima facie case, by proof competent for a court of equity to presume, a court of law to give judgment on a demurrer to the evidence, or a jury to find a verdict in favor of the charge set up.

"This is what is understood by some evidence; it may be slight, yet if it conduces to prove the charge, it is legally sufficient; its weight or credibility is a matter of discretion and circumstances.

"No specific sum can be charged against the spoiler on proof of the mere fact of spoliation; herein the rule differs from that which applies to a claim of property under a deed or will on which the right depends, and the thing claimed is ascertained." Bald., 391.

It must not, then, be supposed that the only effect of the suppression or keeping back books and papers, is to admit secondary evidence of their contents, or that the jury are confined, in presuming their contents, to what is proved to have been contained in them; a jury may presume as largely as a chancellor may do, when he acts on his conscience, as a jury does, and ought to do, and on the same principles.

Mr. Bridges states that he believes there is an entry on the books, of the transfer from Herring to Robert and Isaac Phillips, but don't know how the transfer was made. It is in proof, by the clerks of Robert and Isaac Phillips, that an account was open on their books with the Sixth street lot; that the money of the firm was applied to the payment of the consideration money to Herring; one of the persons who erected the new building says he was paid by the

notes and checks of the firm; a tenant proves that Joseph L. Moss rented it in the name of the firm, who furnished it to the amount of $1,000, and the tax collectors prove the payment of taxes by the firm. In opposition to this evidence, the defendants offer nothing; the books of the firm are suppressed, when they could and ought to have been produced; and the sole reliance in support of the title of Robert Phillips, is the deed from Herring. If you believe the witnesses, Robert Phillips never was the sole and real owner of this property on the first purchase; and if you think the facts stated are true, you may and ought to presume, that if the books had been produced, they would have shown that the payment of the whole purchase money, and the whole expense of the improvements made on the lot, were paid by the firm; that it formed an item of their joint estate, and was so considered by the partners. You may, also, and ought to presume, that the production of the books would have been favorable to the plaintiffs, and unfavorable to the defendants, in any other aspect as bearing on the ownership of this property. On such evidence we would, as a court of equity, hold that there was such a clear equitable title in the firm, that Robert Phillips, or his heirs, were bound, on every principle of justice, conscience, and equity, to make a conveyance, so as to make that title a legal one. And when it appears that the members of the new firm had conveyed it in trust for creditors, as their joint property, that the grantees had accepted the conveyance, and sold the property under the assignment; that the purchaser from them had accepted a deed reciting theirs, and no other title, we cannot hesitate, as judges in a court of law, in instructing you that you may presume that such a conveyance from Robert Phillips, or his heirs, has been made, as they were bound in equity and good conscience to make.

Legal presumptions do not depend on any defined state of things; time is always an important, and sometimes a necessary ingredient in the chain of circumstances on which the presumption of a conveyance is made; it is more or less important, according to the weight of the other circumstances in evidence in the case. Taking, then, all in connection, and in the total absence of all proof of any adverse claim by Robert Phillips, or his heirs, from 1832, every circumstance is in favor of the presumption of a conveyance; and we can perceive little, if any weight in the only circumstance set up to rebut it, which is the proceedings in the Orphans' Court. You will give them what consequence you may think they may deserve, when you look to the time and the circumstances under which they were commenced, carried on, and completed by a sale for $22,500, which counsel admit was not paid, and also admit that the sole object was to extinguish the mere spark of legal right remaining in Robert Phillips, or his heirs, and not because he or they had any beneficial interest in the property. If there was lawful ground for presuming the existence of a conveyance from him, or

them, before November, 1837, we should think that anything accruing afterwards was entitled to no weight in rebutting such presumption: and were we in the jury box, we would think it operated the other way. It was for the interest of the assignees and assenting creditors to consider the conveyance as not made; for if it had been made previously, a non-assenting creditor to the assignment might take it under a judgment, as was done by the plaintiff, and thereby hold it, if the assignment did not pass the title; whereas, by taking the deed as not made, the Orphans' Court sale would vest the title in the assignors, and leave no legal right on which a judgment against Joseph L. Moss and Isaac Phillips could attach. As, however, this is a matter entirely for your consideration, we leave it to your decision, with this principle of law for your guide: that on a question whether a conveyance shall be presumed or not, the jury are to look less to the direct evidence of the fact, than to the reasons and policy of the law, in authorising them to infer that it was made, if the party who was in possession of the legal title, was bound in equity to convey to the real, true, equitable owner. This legal presumption is not founded on the belief alone that the fact existed, but much more on those principles which enforce justice and honesty between man and man, and tend to the security of possessions which have remained uninterested and undisturbed. Should your opinion be in conformity with ours on this point, you will presume that there was a deed from Robert Philips, or his heirs, competent to vest the title to the Sixth street lot in the firm of Robert and Isaac Philips—that it so remained at the time of the assignment, and that it was by such conveyance as would enable them to enjoy the property against Robert Philips and his heirs. Should you think otherwise, you will find accordingly; but even then, your finding would not effect the merits of the case, because Mr. Hanson, or those under him, cannot make the objection of the want of a legal title, unless he stands firm in the position he assumes—that of a bona fide purchaser for valuable consideration, without notice, such as the law requires.

There are two classes of purchasers of this description.

First. Those who are thus referred to, and the requisites to clothe themselves with such character prescribed by the Supreme Court of the United States, in Boom vs. Chiles, in 10 Pet. 210 to 212. "It is a general principle in Courts of Equity, that when both parties claim by an equitable title, the one who is prior in time, is deemed the better in right—7 Cr. 18; 18 J. R. 532; Wh. 46; and that where the equities are equal in point of merit, the law prevails. This leads to the reason for protecting in innocent purchaser, holding the legal title, against one who has the prior equity; a Court of Equity can act only on the conscience of a party; if he has done nothing that taints it, no demand can attach upon it, so as to give any jurisdiction. Sugden on Vend. 722. Strong

as a plaintiff's equity may be, it can in no case be stronger than that of a purchaser who has put himself in peril by purchasing a title, and paying a valuable consideration, without notice of any defect in it, or adverse claim to it; and when, in addition, he shows a legal title from one seised and possessed of the property purchased, he has a right to demand protection and relief, 9 Ves. 30–4, which a Court of Equity imparts liberally. Such suitors are its most especial favorites. It will not inquire how he may have obtained a statute, mortgage, incumbrance, or even a satisfied legal term, by which he can defend himself at law, if outstanding; equity will not aid his adversary in taking from him the tabula in naufragio, if acquired before a decree. Shower, P. C. 697; 4 B. P. C. 328; 1 D. & E. 767; P. C. 65; 7 V. 576; 10 V. 268, 70; 11 V. 619; 2 Ch. Cas. 135, 6; 2 Vin. 161; 1 Vent. 198.

"Relief will not be granted against him in favor of the widow or orphan. P. C. 249; 2 V. J. 457, 8; 5 B. P. C. 292; nor shall the heir see the title papers. 18 Vin. 115; 1 Ch. Cas. 34, 69; 2 Frum. 24, 43, 175; it is a bar to a bill to perpetuate testimony, or for discovery. 1 Harrison's Ch. 261, 3; Sugden, 723, 4; Vinon, 354; and goes to the jurisdiction of the Court over him; his conscience being clear, any adversary must be left to his remedy at law, 2 V. jr., 457; 3 V. jr., 170, 183; 9 V. 30, and 18 J. R. 532, 7 Cr. 18.

"But this will not be done on mere averment or allegation; the protection of such bona fide purchase is necessary only when the plaintiff has a prior equity, which can be barred or avoided only by the union of the legal title with an equity, arising from the payment of the money, and receiving the conveyance without notice, and a clear conscience."

"It is setting up matter not in the bill; a new case is presented, not responsive to the bill, but one founded on a right and title, operating, if made out, to bear and avoid the plaintiff's equity, which must otherwise prevail, 9, V. 33, 34. The answer setting it up, is no evidence against the plaintiff, who is not bound to contradict or rebut it, 14 I. R. 63, 74; 1 Mumf. 396, 7, 10, J. R. 544; 8. 2 Wh. 383; Wh. 527; 6 Wh. 468; 1 J. C. 461. It must be established affirmatively by the defendant, independently of his oath, 6 J. R. 559; 1 J. R. 590; 17 J. R. 367; 18 J. R. 532; 2 J. C. 87, 90; 4 B. C. 75: Amb. 589; 4 V. 404, 587; 3 J. C. 583. In setting it up by plea or answer, it must state the deed of purchase—the date, parties, and contents briefly—that the vender was seised in fees and in possession; the consideration must be stated, with a distinct averment that it was bona fide and truly paid, independently of the recital in the deed; and if notice is specially charged, the denial must be of all circumstances referred to, from which notice can be inferred; and the answer or plea show how the grantor acquired title. Sugden, 766, 70; 1. Atk. 384; 3 P. W. 2801; 243, 307; Amb. 421; 2 Atk. 230; 8 Wh. 449; 12 Wh. 502; 5 Pet. 718; 7 J. C. 67. The title purchased, must be apparently per-

fect, good at law, a vested estate in fee simple, 1 Cr. 100; 3 Cr. 133, 5; 1 Wash. C. C. 75. It must be a regular conveyance; for the purchaser of an equitable title holds it subject to the equities upon it in the hands of the vendor, and has no better standing in a Court of Equity, 7 Cr. 487; 7 Pet. 271; Sugden, 722; Such is the case which must be stated to give a defendant the benefit of an answer or plea of an innocent purchaser without notice; the case stated must be made out; evidence will not be permitted to be given of any other matter not set out. 7 Pet. 271.

"Such are the privileges of innocent purchasers, and such the guards against those who may assume their character in Courts of Equity;" and whoever assumes the character of such a purchaser in a Court of Law, must establish it by the same rules and principles as prevail in equity.

Second. Those who claim the character of purchasers under the 6th section of the 13th El., the requisites of which are thus defined by the law: "That this act, or any thing therein contained, shall not extend to any estate or interest in lands, tenements, hereditaments, leases, rents, commons, profits, goods or chattels, had, made, conveyed, or assumed, or hereafter to be had, made, conveyed or assumed, which estate or interest is or shall be upon good consideration and bona fide lawfully conveyed or assumed to any person or persons, or bodies politic or corporate, not having at the time of such conveyance or assurance to them made, any manner of notice or knowledge of such covin, fraud, or collusion as is aforesaid; any thing before mentioned to the contrary hereof notwithstanding."

Our first inquiry must be, whether Mr. Hanson comes within the first class of such purchasers, by any evidence he has adduced.

He claims the Chesnut street lot under the title of Isaac Philips, by the deed of the assignees, as the estate of Isaac Philips, without any claim by any outstanding legal title. As to this property, then, he does not come within the first class; he relies exclusively on the deed of Thompson to Isaac Philips, the assignment, and the deed of the assignees. He claims the Sixth street lot under Robert Philips, and not Isaac Philips, and adduces as evidence thereof, the following chain of title:

The deed from Herring; the Orphans' Court proceedings; the sale under them; the deed from Isaac Philips, the administrator, to Joseph M. Moss and David Samuel, on the 30th January, 1838, and the deed of 10th May, 1839, (made by them pursuant to the public sale to Mr. Hanson, on the 30th April, preceding,) recorded on the 23d May, 1839, and there rests his case as to the adverse title of the Sixth street lot, as one distinct from the Chesnut street property. On inspecting the deed for the Sixth street lot, there is found no reference to the title of Robert Philips, or the Orphans' Court sale; the whole recital of the title is the assignment of June, 1837, and there is no other covenant in the deed than against the

acts of the grantors, who execute the deed as assignees; and not as purchasers from Isaac Philips, of the title of R. Philips, in virtue of the Orphans' Court proceedings.

No evidence is offered of any agreement, or even intention to sell, or purchase, any other than the title which passed by the assignment; so that there is no obligation, legal, equitable, or moral, on the assignees, to make any conveyance of the right of Robert Philips, unless Mr. Hanson can affect them with some fraud, or show some accident or mistake under which he accepted the conveyance. The form of this deed is in substance the same as the deed for the Chesnut street lot, the recital of the assignment the same, and both made in the capacity of assignees. There seems no one feature of difference between the two purchases, which can make one refer to the title of Robert, and the other to Isaac Philips; and if you believe the evidence of Mr. Blackstone, there is one fact in evidence which goes strongly to prove that he neither purchased, or intended to purchase any other title than what his deed purported to convey. Mr. B. says, that after the ejectment was served on him, he had a conversation with Mr. Hanson, and expressed some doubt about paying the rent; to which Mr. Hanson replied that the property was his, he had purchased it at auction, under the best legal advice. If this was so, and he had purchased the title of Robert, and not Isaac Philips, or that of the firm, it is scarcely credible that he would not have been advised to at least take a deed with a reference to, and recital of that title, and that he would not have done so; on the contrary, he took a deed in the form it appears, and claimed exclusively under it. By reference to the auction sale, it appears that there was no notice of the title of Robert Philips, but the title under the assignment was stated to be good, and the sale made under it. In the absence of all explanatory evidence, the legal construction of the deed is, that it conveyed, and purported to convey no other than the title of the assignors, and that no legal presumption can be made that any other right passed, especially when it does not appear that Mr. Hanson had, at any time before this trial, claimed under the Orphans' Court sale, or the title of Robert Philips. On this ground alone, Mr. Hanson has failed to bring himself within the principles established by the Supreme Court, as necessary to constitute a purchaser of the first class: and there are other circumstances in the case equally conclusive to exclude him. Vide 10 Pet. 211–12.

We are next to consider his character as a purchaser at the assignees' auction sale of the title which is claimed to have passed by the assignment.

The evidence of his filling this character is his bid at the auction, his acceptance as a purchaser, and the deed from the assignees, its record, his possession of the property, and claim of title by the purchaser; but no evidence is offered of the actual payment of any

money, independently of the recital of the deed and the receipt at the foot of it, which is for the whole consideration, while the counsel of Mr. Hanson distinctly admit before you, that only one-third has been paid. There is, therefore, no pretence set up that any more was actually paid, or that the recital of the deed, or the admission in the receipt is correct; but we do not think proper to put this part of the case on the admission of counsel, as they might fairly contend that the admission should be received as made, whereby the payment of one-third would be taken as part of the admission, or the whole be disregarded. It is better and safer to take the case as the law considers it, independently of any admission, and according to well established principles, as applicable to a purchase set up under the circumstances in evidence, of an estate in lands, conveyed "upon good consideration, bona fide lawfully conveyed, to a person not having at the time of such conveyance any manner of notice or knowledge of such covin, fraud, or collusion" as is recited in the law. You will observe, that by the preamble and enacting clause of the English statute, all conveyances, bonds, judgments, &c., made with intent to hinder, delay, or defraud creditors, are declared actually void, although the person who accepts of them is no participator in the fraud; it is a sweeping, general denunciation of such acts as unlawful, having no effect as against the person designed to be defrauded, but good between the parties and all others; the consequence whereof is, as we have heretofore held, that the fraudulent grantor remains the legal owner of the property, not because his deed is not binding on him, or his heirs, but the law has put it out of his power to divest himself of property, by a deed designed to defraud creditors; he therefore holds the legal title in trust for his creditors, and for the purpose of applying it to the payment of his debts, is as fully the legal owner after the conveyance as before, though as to all others the estate is in the fraudulent grantee. 1 Baldwin, 356.

Such is the effect of the enacting part of the statute, which would not protect the fairest of purchasers for the want of any words limiting or qualifying its imperative terms, and precludes any construction or exception; but the 6th section operates as an exception in the case provided for, which is a conveyance, &c., designed by the grantor to defraud creditors, but in which the grantee has in no way participated, or had any notice or knowledge of any fraud before the conveyance—Magniac vs. Thompson, 7. Pet. 389, &c. Mr. Hanson claims to be a purchaser of this description from the assignors under the assignment, and in virtue of the proviso in the law, claims to be protected; although the assignment was fraudulent between the parties, the question now to be considered is, whether, if the assignment be void, he can be in a better situation than the assignors; in deciding which, it must be assumed that the assignment is void as to creditors, unless Mr. Hanson can hold what the assignors cannot. The true enquiry then is, not what

was the character of the assignment, but his character as a purchaser from the fraudulent grantee; for if the assignment is valid, then the plaintiff's judgment was nothing, and he can have no right. We must, therefore, see whether Mr. Hanson fills the character of a purchaser under the 6th section of the 13th El., assuming the assignment to be fraudulent for the purpose of this inquiry, and this only.

The first question is, what he is bound to prove; the general answer is at hand, that claiming under an exception to the law, he must bring himself within it, or he comes under the enacting clause; and he must prove it by other evidence than what is repudiated in the law by clear, comprehensive words, as not sufficient to take a conveyance out of it; they are "any pretence, color, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding."

No words can better or more clearly apply to the consideration, or uses expressed in a conveyance, or other recital, averments, or declarations, which are set forth as the reasons of making it; hence it is incumbent on the party to do more than to produce the deed containing them; for if the mere statement of the parties imposes on a creditor the necessity of proving their falsity, he might not be enabled to do it, as the matters so recited are not within his knowledge. But if they exist, they must be known to the parties to the deed, and can be easily proved; if the law was otherwise, it would be easy, as the Supreme Court of the United States say, 4 Wh. 507, for the grantor to make out such a case by his own recital, that "there would no longer exist any difficulty in evading the rights of creditors." The Supreme Court of this State have also established it as a rule, that whoever sets up a plea of purchase for valuable consideration, must support it by other evidence than the conveyance, or the receipt at the foot of it, which is only the acknowledgment of the grantor. We cannot better state the law on this subject, than in the words of that Court, in Rogers vs. Hall, 4 Watts, 362. "Though in the absence of proof to the contrary, the presumption is in favor of the fairness of a transaction, yet flight and an absolute general assignment are in themselves circumstances demonstrative of fraud; and though not conclusive, they undoubtedly impose on the assignee the necessity of elucidation. He is the most cognizant of the transaction, and best able to explain it; and why should the business of explanation be laid on the creditors placed by him in the dark, though entitled to light? The question is on the existence of a valuable consideration; and it would be against a fundamental rule of evidence to burthen them with the necessity of producing negative proof. The policy of handling these transactions with little attention to tenderness, is obvious and uncompromising. They are ulcers of frequent occurrence in practice, which require to be thoroughly probed, and, if necessary, laid open to the bone,

and on him be the consequences who withholds the means of doing so.

"But the defendant claims to hold discharged of the fraud, if such there were, by having, as he alleges, purchased without notice of it. A decision of the question of notice is uncalled for by the circumstances, and we give none. There was neither proof of valuable consideration, nor the semblance of it; and nothing is clearer than that a plea of purchase for value must be sustained by other evidence than the conveyance. Even the receipt of the debtor is not proof against his creditor claiming paramount to the debtor's grantee, inasmuch as his fraudulent conveyance is no conveyance at all against the interest intended to be defrauded. His receipt or other acknowledgment of payment, therefore, is the act of a grantor, done subsequently to a title derived from him, which, consequently, may not be prejudiced by it. Now, the defendant produced nothing but the conveyance, with whatever collateral evidences of payment may have been embodied in it, or appended to it; and they fell far short of proof of actual payment; for, giving a security for the purchase money, which in practice is often the consideration for a receipt at the foot of the conveyance, is not enough to entitle him to the character of a purchaser for a valuable consideration, and the Court properly rejected the prayer for protection on that ground." 4 Watts, 362.

A deed is evidence of a conveyance in fact, and when the payment of the consideration is proved, it is prima facie evidence of a purchase presumed to be fair till the contrary appears, unless there is something on the face of it to excite suspicion.

This rule is founded on the same sound reasons as the rule that an asserted purchaser must prove the payment of the consideration recited; for a party who alleges fraud, ought to be prepared to prove it, and it is as difficult for a party claiming under a deed, to prove affirmatively his bona fides, or want of notice, as for a party claiming against it, to prove the non-payment of the money. Hence the law has been long and well settled, that on the production of a deed of conveyance, it shall be presumed to be as to fraud, &c., what it purports on its face to be, until some evidence is brought forward to impeach it in some particular which the law makes a requisite to its validity. How far the evidence goes to prove the fact, which will invalidate the deed, is for a jury to decide, if the court shall be of opinion that it conduces to prove it. Whatever would satisfy a jury that the fact existed, if the law would authorise them to presume it from the evidence, or if the court on a demurrer to the evidence would render judgment for the party offering it, then the burthen of proof is shifted on to the party offering the deed, and he must bring himself within the exception or proviso of the statute, in order to make out a case under it. The creditor need not offer evidence to disprove every requisite to make out a valid purchase; it suffices to throw the proof of every requisite on the

alleged purchaser, if the creditor can satisfactorily establish the want of one; in such case the general principle applies, that a party who claims under a proviso or exception to a law, must make out a case which brings himself within it, or he comes within the enacting clause, standing in no better position than the fraudulent grantor against the rights of the creditors attempted to be defrauded. In cases of this description an important inquiry is—had the purchaser such notice as affects his purchase unfavorably? Purchasing under the assignment, the law presumes he had notice of it—its contents, whatever it referred to, and "of such other facts as those already known necessarily put him on inquiry for, and as such inquiry, pursued with ordinary diligence and prudence, would bring to his knowledge. But of other facts, extrinsic of the title, and collateral to it, no constructive notice will be presumed, but it must be proved." 2 Mason, 536. Besides, if there is any thing on the face of the deed of assignment, to which the law imputes fraud, or from which a jury can infer it, the purchaser has, by legal intendment, constructive notice of it, so as to impair his purchase; so as to any matter in the deed from assignees to him, the same consequences follow.

If a purchaser has notice of a fact, he is presumed to have notice of the consequences. 1 Gall. 42. It is in full proof that the following notice was publicly read from the rostrum, at the sale by the assignees on the 30th of April, when Mr. Hanson became the purchaser, by a note in writing signed at the time.

"Bidders will take notice, that the property on the north side of Chesnut street, 42 feet west of Schuylkill Seventh street, being 66 feet front by 158 feet deep, and also that on the west side of Delaware Sixth street, between Market and Chesnut streets, formerly known as Rubicam Hotel, have been levied upon as the property of the late firm of R. & I. Phillips, and are actually advertised for sale by the sheriff, and that the right of the assignees of R. & I. Phillips to convey any title to either of said properties, is disputed and denied.

CHRISTOPHER FALLON.

April 29, 1839."

The Chesnut street lot was advertised and sold as "clear of all incumbrance," "title indisputable"—the house and lot on Sixth street as "clear of all incumbrance;" yet, if you believe the witnesses, here was actual notice that the title of the assignees was disputed—that there was an order for the sale of the property under a levy, and that it was then advertised for sale by the sheriff. It was, therefore, notice of an incumbrance by some act of record which would authorize the sale—it referred to the advertisement which pointed to the nature of the incumbrance, and was in law sufficient to put Mr. Hanson on inquiry at least. And if he had

pursued it with due diligence and prudence, he must have found the judgment and other proceedings of record as they appear on the transcript read, which, connected with the notice, would show an adverse claim, and by a creditor of the assignors, prosecuted with great diligence by the plaintiffs, contested by the assignors and assignees, and then approaching a consummation by effective process.

It is said, that this notice was not such as the law requires, to taint Mr. Hanson's purchase, because it did not specify the particular grounds on which the right of the assignors to convey was contested, by stating, that the assignment was void by reason of fraud; and therefore, the law holds that he is deemed to have had "no manner of notice or knowledge of the fraud, covin, or collusion," between the parties to the assignment, this notice not being sufficient to put him on inquiry. Yet if the law were so, it seems that this or some other notice did put him on inquiry, if he consulted counsel and purchased under their advice. Imagine for yourselves, what was the nature and subject matter of that consultation—was it about real estate that had been assigned for the benefit of preferred creditors; the assignment accepted, the property offered for sale at auction by the assignees, a judgment creditor contesting their right to sell, by a public notice at the time of sale, and Mr. Hanson about to purchase, or having bid and become the purchaser? Could the eminent counsellors who were consulted, fail to inquire of their client, if there was any fraud in the case? Could such counsel be ignorant of the ground on which, and in most cases the only ground on which such assignments are assailed by non-assenting creditors? or could the client suppose that fraud would not be set up—especially when a suit was then depending in the Supreme Court by another creditor, whose suit was founded solely on the averment of fraud, and in which the court had given an opinion fifteen days before the auction sale, of which the counsel of Mr. Hanson could not be supposed to be uninformed? It would seem more probable, that the opinion of the counsel was given rather on the non-existence of fraud after that opinion was delivered, than on the ground that it would not be set up by Mr. Eustace, or the plaintiff in the judgment, on which the sale was to be made by the sheriff. However this may be, we are clearly of opinion, that the notice given at the auction sale was in law sufficient to put Mr. Hanson on inquiry. Mr. Fallon was present to answer any questions, if the object of the notice was not apparent, or the reason of contesting the right of the assignees required to be personally explained—vide 3 Penn. 67. This objection has assumed a strange aspect by the remarks of counsel, that if the written notice had contained an allegation of fraud in the parties to the assignment, a suit or prosecution for a libel would have been the consequence; while it is contended, that the want of such charge makes the notice inoperative, as if the law

compelled a creditor to commit a civil injury, or a public offence, in order to put a person on inquiry about the title he was about to purchase. On the other hand, if Mr. Hanson had not examined the subject fully, and satisfied himself that there was no fraud, how did it happen that when the terms of the sale were to convey a "title clear of all incumbrance," on any of the property, and an "indisputable title" to the Chesnut treet lot, with actual notice of an incumbrance and dispute of the title; that he accepted of a deed with only a covenant against incumbrances by the grantors, or suffered by them, taking no security against a judgment against the assignors. If he consulted counsel on the kind of title he should take, the form of the deed, and the covenants to be inserted, and was advised to accept a deed without any covenant against the very incumbrance referred to in the notice, and to pay his money, to the amount of $36,000, on the transfer of the right of the assignees without better warranty, the client must have stated a strange case to his counsel, if he was advised that he filled the character of a "bona fide" purchaser for a "valuable consideration, without any manner of notice or knowledge, &c." Mr. Hanson was not bound to accept a conveyance without covenants of warranty to the extent of the terms of sale; he might repudiate the purchase on any other terms than those stated in the notice of sale by the auctioneer; and if, when he accepted such a deed as he now produces, he shall be considered by you as filling the character he assumes, we think you must presume very largely and liberally in his favor, if you think he has acted with reasonable diligence and due prudence. Under all the circumstances of the case, our view of the evidence is very different; you will, however, decide on the facts for yourselves, bearing in mind, however, that the notice was sufficient, in law, to put him on inquiry into the fraud set up, to set aside the assignment. (3 Penna. 66–7.)

The course of the argument requires, that we should say something to you on the subject of parties acting under the advice of counsel of eminence in their profession, and of spotless reputation; they are presumed to advise their clients according to their duty and their oaths, with fidelity; and fraud or collusion is not to be imputed to them, without full proof. But you will remember, that though evidence can be given of what counsel advised, or have done, no one can inquire into the statements made by the client, in those confidential communications which the law does not permit to be disclosed to you, or us; yet the whole action of counsel depends on such statement. You have been told in this case, that if the parties have acted wrong, it is the fault of counsel, who are answerable for the consequences, and not the client; but this would be manifest injustice, unless the statement on which counsel acted is exhibited. The profession is too much subject to censure for the result of suits, without inquiring on what case their

opinion has been asked, or a suit brought or defended; justice requires that both sides be heard, but as the counsel cannot disclose what was stated to him, his errors must be imputed to the client, so far as they depend on facts. An opinion given in an office, on a one-sided statement of facts, may well be one way, when on both sides being heard in court, it would be the other; the receipt of a professional opinion depends on the case submitted; if it is on the construction of a paper or law, the court will hear it with respect and due consideration, but cannot take it as a rule of decision on fact or law. However eminent the counsel may be who have advised any of their parties—and there are none more so—their character cannot be infused into the cause of their respective clients, unless the law and the evidence give one pre-eminence over another.

There are other circumstances in this case which may affect the nature of Mr. Hanson's purchase, and his character as a purchaser, after the acceptance of the deed of the 10th of May, which are worthy of your consideration. The sheriff sale took place on the 20th of May, at which Mr. Fallon attended on behalf of the plaintiff, and Mr. Ingraham for the assignees. Mr. Fallon states, that Mr. Ingraham gave verbal notice that the property about being sold, belonged to the assignees, and had been assigned to them before the judgment. Mr. Ingraham states, that, on behalf of the assignees, he gave notice, that the property did not belong to the defendants in the judgment at the time it was rendered, and referred to the assignment; but neither state, that any notice was given, that the property selling had been conveyed by the assignees to Mr. Hanson; that he was present, or any one for him; it also appears, that the deed to him was not put on record till the 23d of May, 1839. Under such circumstances, Mr. Hanson rests his case as a purchaser on his paper title, without producing a witness to prove the payment of any money, or the delivery of the deed in fact; he does not produce any evidence that it was recorded by him, or offer any reason for the omission, but asks you to presume from his paper title, that he has made out all the requisites of a purchaser, such as is protected by the law from the effects of any fraud, which may attach to the assignment. If he has paid one-third of the purchase money, it cannot well be doubted that he can prove it affirmatively, and so of the delivery of the deed, and its being put on record by him. But he adheres to his perilous position, and asks you to presume that he has done that, of which he has offered no other proof than the acknowledgment of the assignees in the deed, and their receipt at the foot; that the grantors delivered the deed, without calling the witnesses to its execution, and that it was recorded by him as a purchaser.

We will not say that you cannot presume these things, and overlook those circumstances which would authorize you to make a

contrary presumption in the three particulars; but we feel bound to say, that in your places we would not so presume.

Should your opinion coincide with ours on the evidence and facts of the case, Mr. Hanson would not be considered to be the purchaser who is protected by the law, as to any of the requisites mentioned; but the consequences are the same, if he fails in any one. To be so, he must be, in your opinion, not only a purchaser without any manner of notice or knowledge of any fraud in the assignment, such as the law requires to be given to him; he must also be a purchaser for a valuable consideration, actually paid, and the property must have been bona fide conveyed to him, pursuant to the purchase, so that the purchase must be in all respects an absolute one, such as it purports to be. If you are not satisfied that this is the character of his purchase, and his as a purchaser, then he is in no better situation than the assignees; if you think otherwise, you may find a verdict for the defendants; if so, we must request you to find it subject to the opinion of the court on the point reserved, which is, whether if he is in fact a purchaser such as the 6th section of the law defines; he can hold the property against the plaintiff, if the assignment is fraudulent on its face. On that subject we do not think it proper now to express any opinion; it is a pure question of law, which we have not had time to examine fully during the trial, and it will better the exigency of the case to reserve it.

We now come to the enquiry whether the assignment is valid or void.

It is alleged to be fraudulent in fact, and in law. Fraud in fact consists in the intention to prevent creditors from recovering their just debts, by any act which withdraws the property of a debtor from their reach; both parties must concur in the illegal intention. 1 Bald. 356–7. S. C. 7 Pet. 398, &c. But the least degree of concert or collusion between the parties to an illegal transaction, makes the act of one the act of all. 4 Watts, 361. Fraud in law consists in acts which, though not fraudulently intended, yet as their tendency is to defraud creditors, if they vest the property of the debtor in his grantee, they are void for legal fraud, which is deemed tantamount to actual fraud, full evidence of fraud, and fraudulent in themselves, the policy of the law making the acts illegal. 1 Bald. 356, 533. The alleged acts of fraud are numerous, covering a large space of time, but all are offered in evidence as bearing on the assignment; they are competent evidence to impeach it, if the plaintiff has satisfied you that they tend to show the intention of the parties at the time of making it. With this object, you may take into consideration whatever preceded or followed it, if the circumstances show a connected chain of facts leading to, or following the assignment, and they can be in any way brought in to explain its nature and character. But proof of fraud in any transaction wholly unconnected with this, or not

tending in any way to affect its fairness in fact or law, ought not to be regarded.

Fraud must be brought home to this transaction, but as to acts which led to it, which were preparatory, and with reference to it, as well as those which followed or grew out of it, in order to effectuate the intention of the parties, they are as proper to be considered as those which took place at the time. The character of a deed, or other act which affects creditors or purchasers, may be judged of by the subsequent conduct of the parties, which throws back light on their conduct. 5 Pet. 280, &c. You will, therefore, carry these principles into your consideration of the various acts of alleged fraud, which the plaintiff has set up to invalidate this assignment. The evidence of fraud consists, 1st, in not assigning the Walnut street house and lot, and furniture. The house and lot was conveyed to Joseph L. Moss, in 1834, for the consideration of three thousand dollars paid, and a mortgage of eight thousand dollars, which remained a lien on it; on the 20th March, 1837, he conveyed it to David Samuel, one of the assignees, for fifteen thousand dollars, by deed recorded on the 21st; Samuel re-conveyed to Moss on the 25th March, for the same consideration, by deed recorded on the 27th; on the 24th March, 1837, Joseph L. Moss gave a warrant of attorney to confess a judgment to John Moss for twenty-four thousand six hundred dollars, reciting a bond for that amount, which was not produced at the trial, on which judgment was entered on the 27th March. On the 27th May, 1837, Joseph L. Moss made a bill of sale of his household furniture to John Moss for thirty-nine hundred dollars, in consideration of the money due on the judgment of twenty-four thousand six hundred dollars; but no credit was given for the amount of the furniture on the execution which issued upon that judgment. Notice was given to produce the bond, and prove the consideration for which it was given, but neither was done; Joseph L. Moss continued in possession of the house and furniture, and John Moss paid one or more of the creditors of Joseph L. Moss and Isaac Phillips, who opposed their discharge under the insolvent act, but withdrew their opposition in consequence.

In deciding on this transaction throughout, we must be understood as not intending, in any way, to intimate any opinion as to its effects on any controversy existing, or which may arise between Mr. John Moss and the plaintiff, or any other creditor of R. and I. Philips, or either; we look upon it solely with a reference to withholding the house, lot, and furniture from the assignment, as a badge, evidence, or ground of inferring fraud in the assignment, in the first place. Next, to ascertain whether Joseph L. Moss has offered any evidence to rebut the proof or presumption of fraud attending the transaction; for it is one thing, whether a debt is really owing to John Moss to the amount of the judgment, and a very different thing, whether Joseph L. Moss has given such evi-

dence as he was bound to do, in order to repel the imputation of fraud in keeping this property back.

He sets up the incumbrance upon it as a reason for not assigning it, and if there is in the evidence any thing proving or conducing to prove fraud in so doing, any thing from which a jury may presume fraud, he must rebut it, or the imputation may be fastened upon his conduct.

As to the furniture, there is evidence and a strong badge of fraud in retaining possession, even if the sale was made to a purchaser, and the money proved to have been actually paid; the want of possession by the purchaser must be accounted for—it is not enough to set up family considerations; they will not suffice, unless a sheriff's sale has intervened, or some other reasons given why possession did not accompany the bill of sale. This has not only not been done, but no proof has been offered that any consideration has been paid, except that the bill of sale recites the judgment as the consideration which is set up by Joseph L. Moss as evidence that he owed the amount for which it was rendered. We will not say whether, as between John Moss and other persons, this judgment is evidence of the debt or not, without other proof, but as between Joseph L. Moss, and one of his creditors, who alleges it to be fraudulent, it is only his acknowledgment that he owed the amount, which is no evidence between him and the plaintiff under the circumstances in this case. He has been called on to prove the consideration of this judgment, which he may be presumed to have been able to do, and has not done it, but relies solely on the record of the judgment and proceedings upon it; as between the parties to this suit, this is not sufficient to rebut the fraud of this transaction, if there was any, or if he sets up Mr. John Moss as a purchaser of the furniture in part payment of the judgment, he must show it by something more than appears.

As to the house, there is much unaccounted for in the change of apparent ownership in so short a space of time, especially when Mr. Samuel is an actor; he is an assignee in the assignments of March and June, in 1837; fraud is imputed to him, as well as the assignors; he and Joseph L. Moss can explain these transfers, but do not do it; they too rest exclusively on the papers which are in evidence, without calling a witness to explain what you will probably agree in opinion with us requires explanation. Their deeds purport to be for the consideration of fifteen thousand dollars each, with receipts at the foot for the payment in full, which must be taken as true, or false; if true, why then was this passing of property and money from one to another in five days, we are not informed; if false, the deeds are entitled to no credit till explained.

As to the judgment, it was a lien on the Chesnut and Sixth street lots; if Joseph L. Moss had either a legal or equitable right to them, those lots were as much encumbered as the Walnut street lot, and if the whole twenty-four thousand six hundred dollars was

justly due, it rendered one of them at least as valueless to the assignees and creditors of the firm as that lot. Yet we find the lots on Chesnut and Sixth streets advertised by Mr. Samuel and his co-assignee for sale, "clear of all incumbrance," and we are not informed why this judgment should render the Walnut street lot alone so worthless as not to be worth assigning.

As to the Arch street house and lots, it appears that the lots were conveyed to Mrs. Philips in August, 1834, for the consideration of twelve hundred dollars, and an annual ground rent of six hundred and ninety-three dollars, recorded on the 23d of March, 1837, the day after the execution of the New York assignment. In September, 1834, Isaac Philips made a contract for building a house on the Arch street lots, which was finished in the summer of 1835, at an expense exceeding twenty-two thousand dollars, exclusive of furniture. In November, 1821, a house and lot in Locust street was conveyed to Sarah Moss, afterwards Mrs. Philips, who with her husband conveyed the same, on the 1st October, 1835, to Peter McCall, for ten thousand dollars. In April, 1837, Isaac Philips conveyed his life estate in the Arch street house and lots to John Moss, for seven thousand one hundred and two dollars, and twelve cents, being the value of his life estate therein, as estimated at the annuity office, which sum was recited and receipted for in the deed as paid. In June following, Isaac Philips made a bill of sale of the furniture remaining in the Arch street house, in consideration of five thousand five hundred and seven dollars paid, and possession stated at the foot of the bill of sale to have been delivered, to which was attached a schedule of certain articles, valued at eight hundred and sixty dollars. This sale was to Joseph M. Moss, one of the assignees.

The assignment of June, 1837, did not embrace the house and lots in Arch street, the furniture, or any claim by Isaac Philips on the property as the separate estate of his wife, or for any debt due by her on account of the money expended in building the house. Though the furniture was not assigned, it was appraised as part of the assigned effects, and entered on the inventory thereof.

In reference to these transactions, the same remarks are applicable as to the Walnut street property; reliance is had solely on the papers produced, without any effort at explanation of what requires it; no proof is offered of the payment of any money on the bill of sale of the furniture, or of any delivery of possession to the purchaser, other than the statement at the foot. Nor is this any evidence that any money was paid on the sale of the life estate of Isaac Philips in the house and lots, except his own acknowledgment in the deed; or any proof of what money was paid on the sale of the Locust street lot, other than the recital and receipts of Philips and wife; and there was no attempt to shew the application of any part of it, to building, or in furnishing the house.

These circumstances, and the withholding from record the deeds to Mrs. Philips till after the declared insolvency of the firm, and their assignment of the New York effects, leave the expenditure of so large a sum on the house, open to much ground for your consideration. It has been contended by defendants' counsel, that though these transactions may be open to suspicion, yet that they can effect only the property in question, and that the assignment is valid notwithstanding. This argument is good, so far as it respects the non-delivery of possession of the furniture; that may be considered as rather evidence or a badge of legal, than of actual fraud, not affecting the validity of the assignment, as a substantive cause for holding it void. But if you are of opinion that these transactions indicate an intention in the parties, assignors and assignees, to make such a disposition of the property of the assignors, as to place it beyond the reach of creditors, by any other means than fair and bona fide sales, transfers, and dispositions of it, or by incumbrances for debts justly due, and you can trace such intention in the conduct of the parties from March till June, and that the last assignment was the carrying such intention into effect, then it is void throughout. We do not say that keeping back property from an assignment is alone evidence of fraud—our opinion is founded on all the circumstances of the case which are in evidence, of which one of great weight in our minds is the entire want of any attempt at explanation of matters which throw the burthen of proof on the defendants. It is a bold requisition on a jury to make presumptions of facts merely from papers which contain only the declarations and recitals of the party who makes them, where direct proofs of the facts can be made if the parties desired to make it. The law makes no such presumptions in favor of the party who produces deeds, or papers, if it does not appear that he offers the best evidence of the facts which it is in his power to produce; especially if he keep back better evidence which is presumed or appears to be at his command; and a jury ought to be very cautious in making such presumptions, which may tend more to encourage than check the suppression of truth.

The plaintiff has referred to the records of the Court of Common Pleas and the discharge of the assignors under the insolvent act, as evidence of fraud, which is reflected back on the assignment; you will judge how far it is proved by extraneous evidence, taking what appears on the record and papers attached to it as fully proved and operating according to its legal effect. But whatever may be your opinion of the matters so proved, or apparent on the record, you will refer them to the assignment; and though you may think there was fraud in the insolvent proceedings, you will not attach it to the assignment, unless you have reason to believe that it shows a fraudulent intention in some way connected with it, growing out of it, or tending to effectuate its object more completely.

The composition with the opposing creditors was an improper act, and taints the conduct of the parties who made it with suspicion, which may be thrown back on the assignment, if you think it was connected with, or formed a part of the original design.

Much has been said about the proceedings in the orphan's court, and were it necessary for the purposes of this case to decide all the questions which have been raised in relation to them, we should have much difficulty in doing it; for there are terms and provisions introduced into the act of 1832, under which these proceedings were conducted, that are not to be found in preceding laws, and are of rather an unusual character as respects the jurisdiction of that court, being similar to the provisions in the insolvent law of 1826, which we have before noticed. If it was an act of Congress we should have less difficulty, but being a law of a State affecting many titles, we would give an opinion on its construction, only in case of its being necessary to decide the merits of this case, which we think it is not, as in our opinion it cannot avail the defendants in this case, admitting the power of the court to be undoubted to do what it has done in relation to the Sixth street property.

On inspecting the record of the Orphan's Court proceeding, it appears there, that in November, 1837, about a month after the discharge of Joseph L. Moss and Isaac Philips, under the insolvent act, Isaac Philips, as administrator of the estate of Robert Philips, applied to the Orphan's Court for authority to sell the Sixth street lot and house, for the purpose of paying a debt due to himself, amounting to more than $35,000, which, he stated in his petition, was the only debt due by Robert Philips at his death. A sale was made in December, 1837, by the administrator, reported to and confirmed by the court; whereupon a deed was executed to Joseph M. Moss and David Samuel, the purchasers, for the consideration therein expressed and receipted for as paid, of $22,500, dated 30th January, 1838; on the back of which was a conveyance by them to Mr. Hanson, dated 10th May, 1839, for $20,300, for which a receipt was given at the foot.

The record contains no evidence of the debt due by Robert to Isaac Philips, except the statement of the latter in his petition, verified by his own affidavit thereto annexed; yet Mr. Bridges and Mr. Welch, two of the clerks of the firm of R. & I. Philips, state, that in the books of the firm there was an account open with each partner. The petition states the exact sum due on its date to be $35,000. A schedule attached to the insolvent petition of Isaac Philips, states in detail the personal expenses of the members of the firm for nineteen years, in exact sums, which could not well be done without a reference to books or accounts; yet they are all suppressed, and the whole proceedings of the Orphan's Court are based on the mere statement and affidavit of Isaac Philips, of the existence of so large a debt, when there can be little, if any doubt,

that if such a debt was due, there was better evidence in the party's power.

In looking at the deed, we find it to express the payment of $22,500 to I. Philips, as the purchase money; yet there is no where found any assignment of this alleged debt by Isaac Philips, nor any notice of it in his schedule in the insolvent proceedings; it must be observed, too, that Robert Philips left three surviving brothers, so that Isaac Philips was entitled only to one-third the purchase money beyond the debt justly due to himself. It appears, too, that Joseph M. Moss, one of the assignees, and Joseph L. Moss, were securities in the administration bond, and John Moss and E. L. Moss were securities approved by the court, for the appropriation of the proceeds of the sale according to law. It also appears, that, though Robert Philips died in December, 1833, no administration was taken out on his estate till in January, 1837, after a citation from the Register's Office, in conformity with the law respecting collateral inheritances. Now, if we take this transaction as it purports to be on the face of the Orphan's Court proceedings, it is this, and nothing else.

In June, 1837, Isaac Philips and Joseph L. Moss assign to J. M. Moss and David Samuel the Sixth street house and lot, on certain trusts, as their estate, owned by them and the firm of R. & I. Philips; in December, 1837, the assignees purchase this property from Isaac Philips, as the estate of Robert Philips, for $22,500, take this amount from the residue of the assigned fund, pay it to Isaac Philips in January, 1838, and in May, 1839, convey it to Mr. Hanson for $20,300, making a dead loss to the fund assigned $2,200, beside interest.

This is the transaction as it appears on the record and deeds; if it was so in fact, how would it look when it appeared in the accounts of the assignees as trustees, when they were called on for a settlement? Would auditors, or the court, approve of such conduct?

In our opinion, a grosser fraud could not well be imagined, and in order to avoid its imputation, the parties who set up the Orphan's Court proceedings, as giving a title to the assignees by the deed of Isaac Philips, most distinctly admit its falsity, that no money was paid, and that the whole proceeding was got up for the purpose of extinguishing the mere legal right, which was supposed to be in Robert Philips, and not to affect any rights against the assignment.

This saves us the necessity of further inquiry, whether these proceedings are available to the defendants as a title distinct from, and adverse to that of the firm of R. & I. Philips; but these proceedings furnish a salutary lesson to courts and juries, not to give much credence to deeds and papers, when the parties to them keep back evidence of their true character, whereby light is excluded which would otherwise explain their nature and object.

If these proceedings were concocted by Isaac Philips and the assignees, for the purpose of injuriously affecting the creditors of

R. & I. Philips, who did not assent to the assignment, they are so far void as the evidence of participation in the fraud by the assignees is sufficient on the authority of the Supreme Court of this State, in 4 Watts, 361, to make the act of one the act of all. On their own admission, it was not a real sale and purchase—no consideration was paid, or stipulated to be paid; it was not intended to pass any title adverse to that of R. & I. Philips, bnt merely to unite what was supposed to be an outstanding legal title, to the equitable right existing in the members of the firm. That such was the object, and no other, appears not only by the admission of all the parties now, but is manifest from the conduct of the assignees, in conveying to Mr. Hanson; for they neither recited any title derived under the Orphan's Court sale, nor professed to convey any; as between the parties, therefore, it was not a binding sale, and if the object was merely what has been declared, it must operate according to the intention with which it was made, and the legal effect of what was done. Of consequence, it cannot impair the right of the members of the firm; if the assignment is valid, the sale inures to the use of the assignees, as an extinction of any right in Robert Philips, unless his heirs contest it; and if the assignment is void as to the plaintiff, the Orphan's Court sale does not affect his right, but inures to his use, as standing in the place of the defendants in the judgment under which he purchased.

Having thus disposed of the matters set up by the plaintiff, in support of the allegation of actual fraud in the assignment, which is exclusively a question for your consideration, we proceed to notice the objections to its validity on the ground of legal fraud, which presents questions of law for the decision of the court.

Of these objections, a very prominent one is, that the requiring a release from the creditors of the firm, as a condition precedent to their coming in for any portion of the property assigned, is illegal, and invalidates the assignment. If this were a new question, or was now open to examination in this court, we should be strongly inclined to hold the assignment void, as contrary to the policy of the law; but the Supreme Court of the United States have decided otherwise. In Brashear vs. West, they hold, that when a debtor assigned all his property for the benefit of his creditors, a stipulation for a release had been settled by the courts of this State to be valid, and that this settled construction of the law must be followed in the courts of the United States. 7 Pet. 615, 16. This decision is binding on you and us, as the established law of the case; you will consequently disregard any opinion of ours to the contrary, and consider the law to be settled in favor of the assignment on this point. Had the case in the Supreme Court of this State, in which the question was supposed to have been decided, been as closely examined, and that cause been argued as this has been, the result might have been different; it is, however, now too late to re-examine the question here; elsewhere I may feel at liberty to

think otherwise; yet it may tend to shake too many titles held under such assignments, to interfere with them in any other way than by prospective legislation.

But though you will take the law to be thus settled, when the assignment is of the whole of the debtor's property and effects, it is otherwise if any portion is fraudulently kept back from the assignment; should such be your opinion in this case, then the assignment would be void by the exaction of a release from the creditors, according to the opinion of the Supreme Court of this State, in 5 Rawle, 221, as well as the soundest principles of law. We, however, are not desirous of giving you any imperative instructions on any of the grounds of legal fraud on which this assignment is assailed, nor do we think it necessary to state them in detail; they arise on the face of the assignment,—they form a part of the plaintiff's case, which cannot be excluded from it, and must be decided by the court as questions of law, should your verdict on the evidence make it necessary.

This case is an interesting and important one, not only to the parties concerned, as to the value of the property in dispute and what may be consequently involved, but on public considerations, arising from the nature of the transactions in evidence, their character and tendency. We think it better that the case should be decided on the questions of fact involved, reserving for future consideration any matters of law not yet stated to you, which your verdict may leave for our decision, should it be for the defendants. But though every question of fact is for your consideration solely, we are not desirous of throwing on you the whole responsibility, without expressing our opinion on the result of the evidence, not as a direction to bind, but as opinion merely, which will have such weight, and such only as you may think proper to give it. It is a painful task to view the transactions which are in evidence, in order to ascertain whether they are fraudulent; but it is a duty not to falter, and it will have a better effect, if there is a concurrence of opinion between the jury and the court on that question, than to have it in doubt as to either. A careful consideration of all the testimony in the case has led our minds to the conclusion, that there are such circumstances as will fully justify your finding the assignment to be invalid, on the ground of its being fraudulent as to creditors in point of fact. Should your view of the evidence be in accordance with ours, you will find for the plaintiff, otherwise you will find for the defendants. In the latter case, your verdict will be subject to the opinion of the court, on the questions of legal fraud, which have been made by the plaintiff's counsel.

The defendants excepted to the charge.

The jury, after a few minutes' absence, returned with a verdict for the plaintiff.

Motion for new trial.

C. GUILLOU,
C. FALLON, *For Plaintiff.*
H. M. PHILLIPS,
F. W. HUBBELL,
E. D. INGRAHAM,
H. CHESTER,
JOS. R. INGERSOLL, *For Defendants.*

Whereupon the defendants excepted to the following matters or propositions of law contained in the said charge to the jury, to wit:

"Mr. Joseph L. Moss and Isaac Phillips, the defendants in the judgment, have been divested of all their interest, either by their voluntary assignment in June, 1837, and the proceedings under the insolvent act in October following, or the sheriff's sale in May, 1839. They can set up no title adverse to the plaintiff, and though the assignment in June may be perfectly valid, they have no right to retain possession, unless, perhaps, with the assent of the assignees, under their title, as distinct from theirs. Mr. Joseph M. Moss and David Samuel have no legal estate in the property; their deed to M. Hanson divested their interest in May, 1839; they have, therefore, in themselves, no right to retain possession; though, if they are in possession, they may defend under the assignment, and the title of M. Hanson, as a purchaser from them, unless such privity exists between them and the defendants in the judgment, as prevents them from setting up an outstanding title—a question, which is not very important in this case, and might rather tend to make it more complicated than is necessary, by discussion."

And thereupon the said defendants further excepted to the following matters or propositions of law contained in the said charge to the jury, to wit:

"It is farther objected to the plaintiff's right, that having accepted a judgment, subject to the discharge of the defendants under the insolvent law, he took it, subject to all its incidents and effects, whereby he can come upon the property of the debtors only as a general creditor, on an equal footing with all others, through the intervention of the trustees, or in their name. This is, however, not the true construction of the agreement; it means that by confessing judgment, the defendant waived no rights or exemptions, which accrued to him by the discharge; it left him free to claim freedom from arrest on any process on the judgment, or any other right secured by the law; but it left the plaintiff at liberty to pursue any property which had belonged to the defendants, by a proceeding adversary to a purchaser under him,

or any assenting creditor. If, notwithstanding any previous assignment, either voluntary or under the insolvent law, there was any property to which his judgment could attach, there was nothing in the assignment or its legal effects which prevents the plaintiff from pursuing it by legal process, till by its consummation by a sheriff's sale and deed acknowledged, he put himself in a position to assert his pretensions in a court of law, or which could, in any manner, compel him to come in under either assignment, or lose his debt.

"As a judgment creditor, he might contest with the assignees under the voluntary assignment, the validity of their title, or that of any person claiming under them, or the right of the trustees under the insolvent assignment; and if he could defeat the right thus claimed, the property was open to his claim, if he could establish it. In endeavoring to do so by this suit, we think he is not acting inconsistently with the terms on which the judgment was confessed; the defendants disclaim all interest in the property from the time of their first assignment, and are, therefore, not competent to question the plaintiff's right to try title with others. On a contrary construction, he would be compelled to acquiesce in the exclusion from the benefits under the assignment, by not having released in time; or if it was inoperative, to come in only as a general creditor for his rateable proportion of the available effects of the insolvents. We think this objection is not sustained."

And thereupon the said defendants further excepted to the following matters or propositions of law contained in the said charge to the jury, to wit:

"It is next objected, that the plaintiff is precluded form contesting the validity of the assignment of June, 1837, by having filed a bill in equity, admitting its effect, and claiming under it, on the same principle which binds a creditor who takes his dividend under it. That principle is undoubtedly a sound one, but we cannot perceive its application to this case.

"The bill states the fact of an assignment—its acceptance by the assignees—their action under it, with the consequences of such action on the equitable rights of the plaintiff; without affirming or denying the legal efficacy of the assignment, he alleges that the assignees have made, or are about to make a disposition of certain specified notes, in violation of an agreement between the plaintiff and the assignees, prejudicial to his interest and rights. He asks the court to interfere, for the purpose of protecting him from the effects of the assignment, to prevent the assignees from diverting the notes or their proceeds from the purposes agreed upon by the assignors before the assignment; he avers this agreement to be binding on the assignees, who are not authorized, on principles of

equity, to apply this fund to the purposes of the assignment. It is consequently a disaffirmance of the terms and conditions prescribed by the assignors—a claim to the whole of the notes and proceeds, for his own sole benefit, in opposition to the claims of every other creditor. The whole bill is founded on the equitable obligation and duty of the assignees to apply this portion of the assigned effects, contrary to the express terms of the assignment, on the ground that for the causes alleged, the law of equity controls its effect, and must regulate their distribution of the funds. On these principles the equitable claim of the plaintiff to this portion of the personal property assigned, is as adverse to the assignment as his legal claim to the real estate in controversy. The difference between the two claims is this: in the bill in equity the plaintiff avers the delivery of the notes to the assignees—that they were payable to, and endorsed by Robert and Isaac Phillips—that having then come to their hands, his remedy to recover possession of the unpaid notes, or the proceeds of those which are paid, is in equity. Whether his remedy is at law or in equity, is for the court, before whom the bill is pending, to decide; the object of a suit in either court would be the same; the question in both must be—in whom is the right to the notes or their proceeds—as it is in this case, in whom is the right of possession to the real estate? In the one case the validity of the assignment in passing the right to these notes to the creditors under the assignment, is as much contested by the plaintiff as it is in the other; the fact of an assignment is admitted in both, but the plaintiff takes different modes of avoiding its effects.

"Having accepted and acted in execution of the trust, the assignees cannot deny the validity of the assignment; the law places their action under the supervision of a court, to whom the plaintiff applies for the application of a specific fund to his exclusive benefit, notwithstanding the contrary application by the assignees, under the requisitions of the assignment.

"Had the plaintiff resorted to a court of equity for a remedy as to the land in controversy, in virtue of his sheriff's deed, he *he* must have stated his case, as he has done in his bill in equity in relation to the notes, praying for a reconveyance of what was not sold, an account for, and payment of what had been sold, on the ground that the property did not pass in equity by the assignment, and that, in the hands of the assignees, it remained subject to his paramount right as a creditor attempted to be defrauded by it. Broader ground might be taken in the latter than in the former case; the plaintiff might rest his claim to the notes, on the principles of equity implanted in his case, without an allegation of fraud in fact, while he might put his claim to the land on every ground of fact, law, and equity, which his case covered; but when his object is to paralyze the assignment, either as to the notes or land, he cannot be held to affirm or claim under it.

"So long as he claims adversely to the terms and conditions upon which the assignees must act pursuant to the assignment, he may, according to the nature of his case, apply to a court of equity, to compel them to execute the trust, according to their legal and equitable obligations; or apply to a court of law, on the ground that the assignment passed no legal right to personal or real property. In resorting to a court of equity in one case, and a court of law in the other, the plaintiff is at liberty to choose his ground in affirming, or disaffirming the legal effect of the assignment in creating a trust. The assignees are precluded from a choice—they have fastened on themselves a trust, either for the assenting or dissenting creditors, which the appropriate court will carry into execution, according to its settled principle. As the trust may be a legal or equitable one, its execution is enforced at law or in equity; as to one portion of the assigned property, the proper remedy may be at law, and as to the other, in equity; yet the pursuit of one can be no bar to the other, unless the grounds respectively assumed are wholly incompatible. A creditor who asks for such an execution of a trust as puts him in the same situation as if a trust never existed, and defeats the objects intended to be effected by the creation of the trust, by directing the subject of the trust from those for whom it was designed to himself, cannot be said to claim a benefit from the trust, or to affirm what he disaffirms. By pursuing this course, he gives up no right which he could assert at law, by invalidating the instrument creating the trust—his objects are the same; the results of a decree in equity, or a judgment at law, are the same, when his rights are established to the same extent as they existed before the assignment, or as if it had never been made. Should the plaintiff obtain a decree in his favor, as to the notes and their proceeds, he thus far annuls the assignment, that it no longer impairs his rights, and is used by a court of equity as the mere instrument for the purposes of justice, and a conduit to the equitable jurisdiction which it exercises over the trustee. Should he obtain a judgment at law, an execution gives him all the fruits of a decree in equity—the different modes of proceeding being but the varied means of effecting the same object. We are, therefore, of opinion, that the filing and pending of the plaintiff's bill in equity does not, in law, impair his rights to proceed by ejectment to recover the property now in dispute, any more than bringing and prosecuting the present action would prevent him from prosecuting his bill in equity. This objection must consequently fail."

And thereupon the said defendants further excepted to the following matters or propositions of law contained in the said charge to the jury, to wit:

"Another objection to our entering on an investigation of this case is founded on the decisions of the Supreme Court of this State, in

the case of Fassit *vs.* Phillips, which it is said established the validity of this assignment, and is obligatory on this court, on the principles which it has adopted and acted on uniformly. We cannot so view it. That was a bill in equity, praying for an injunction against any proceedings under the assignment, on account of its invalidity for the causes set forth in the bill, being acts of alleged fraud on the part of Joseph L. Moss, one of the assignors; an injunction was granted, but on the coming in of the answer, there appeared a positive denial of fraud, and of every fact on which the equity of the plaintiff depended. A motion to dissolve the injunction was made and heard on the bill and answer alone; the court dissolved the injunction, the only effect of which was, that assuming the answer to be true, as the court were bound to do in the then state of the case, all action upon it was suspended till evidence was taken, and the cause came to a final hearing, when it will be competent for the plaintiff to disprove the answer, and support the allegations of his bill. In the mean time, the merits of the cause remain as open as before; the injunction was granted on the prima facie case stated in the bill and exhibits, but as the whole equity of the plaintiff was denied, the prima facie case was rebutted, whereby the parties now stand as if the court had not acted on the bill; an interlocutory order, in granting an injunction, or taking it off, has no effect on the rights of either party at the hearing. The facts set up or denied in the answer, can neither be considered as established or negatived; for the purposes of the motion to dissolve the injunction, the answer was taken as true; it has performed its office, leaving its future effect dependant, in the opinion of the court, on the effect of opposing evidence on the part of the plaintiff. Had the decisions of the court been made on a hearing of the cause on the pleadings, exhibits and evidence, it would have been entitled to great weight in our mind, and yours, on the facts before them, and perhaps conclusive on matters of law; certainly so, if their decree had been founded on any State law, statute or common, which was local, and not in conflict with the laws of the Union."

And thereupon the said defendants further excepted to the following matters or propositions of law contained in the said charge to the jury, to wit:

"It has also been contended, that whatever may be the effect of the assignment of June, 1837, on the rights of the parties, or if it is wholly void, the estate of the assignors passed to the trustees appointed by the court, on the discharge of Moss and Phillips, under the insolvent law of 1836, by the force of the law and the discharge, from the time of the filing the petitions for the benefit of the act, so that there was no interest in the defendant on which the judgment under which the plaintiff claims could attach. If

this position is well taken, it takes away all right in either the plaintiff, the assignees, or Mr. Hanson to the property in controversy; for if it is still vested in the trustees for the benefit of all the creditors of the insolvent, without any assignment made by them, then as the trustees have made no conveyance, the plaintiff's judgment was no lien on their rights; and if the assignment of June, 1837, is void, Mr. Hanson has no right.

"As this position is founded on the words of the thirty-fourth section of the insolvent act, it becomes necessary to examine its various provisions, in order to ascertain the intention of the Legislature in this particular.

"By the 1st section, the courts of common pleas have power to grant relief to insolvent debtors, 'on application made in the manner hereinafter provided.' Purdon, 508.

"Section 2. 'The jurisdiction of the said court must be exercised as follows, and not otherwise,' viz: 'by section 9, the petitioner must present a statement of his estate, effects and property, debts due by him, &c.;' by section 12, he must exhibit a true account of his debts, credits, and estates, and shall satisfy the court that he has neither concealed or conveyed, for his own use, or for any of his family or friends, or whereby to expect any future benefit to him or them, any part of his estate, effects, or credits.

"Section 13 directs, that if hes hall be entitled to relief, he shall take an oath that he will deliver up, and transfer to his trustees, for the use of his creditors, all his property, debts, rights, and claims, &c.; that he has not given, sold, or intrusted any part of his property, rights or claims, to any person, whereby to defraud his creditors, or any of them, or to receive or expect any profit, benefit, or advantage thereby.

"Section 14. 'The petitioner shall thereupon execute an assignment of all his estate, property, and effects whatever,' to such trustees as may be nominated by his creditors, or appointed by the court.

"Section 15. 'When such assignment shall have been executed, the court shall make an order of discharge;' and then follows the 34th section, enacting that, 'The trustees appointed as aforesaid, shall be deemed to be invested with all the estate and property of the insolvent, at the time of filing his petition, subject to existing liens, and the trustees shall take possession of such property and estate, and may sue therefor in their own names, as well as for debts and things in action, to which there are these provisoes:— 1st, That no purchase or assignment of real estate in the county, made bona fide for a valuable consideration, before the assignment, to any person not having actual notice of the petition, shall be impeached thereby. 2, Nor if situated out of the county, if so sold or assigned before the recording the assignment in the other county. 3, Nor a sale of personal property to any person, not having actual notice of the petition or assignment. 4, Nor if any person pays a

debt, or delivers property to the insolvent, without actual notice, shall he be liable to pay or deliver the same to the trustees.

"Section 36. 'If any insolvent shall, prior to such assignment, have conveyed any part of his property to his wife and children, or either, or to any one in trust for them, or have conveyed to any other person with intent to defraud creditors, the trustees shall have power to recover and dispose of the same, as fully as if the insolvent had been seised or possessed thereof at the time of the assignment.'

"From this summary view of he law, it is evident that the legislature intended that an assignment should be made before a discharge; the sections subsequent to the 14th, are predicated on the supposition that it had been made, and their most important provisions will become a dead letter, if none is made, especially the 36th. By referring to the preceding act of 1814, it appears that no assignment was requisite; but as the act of 1836 is an entirely new system, superseding the old, its requisitions cannot be overlooked.

"The 14th section is peremptory, that an assignment shall be executed; and the 15th, in terms, makes the discharge dependant on its having been done; the making the estate vest before the assignment, or without one, is restoring the law of 1814, by entirely annulling the provisions of the 14th and 15th sections of the new act, and making it impossible to carry the 36th section into effect by any other construction than substituting petition for assignment. We are aware of no rule or principle of law which justifies such construction by the force of the 34th section; it must be taken in connection with the other parts of the law, so as to make the system consistent in all its parts, unless its words exclude all construction and reference, which in our opinion they do not; on the contrary, they contain a reference which makes them in perfect harmony with what precedes and follows. Thus, in the 15th section, "the trustees appointed as aforesaid,' necessarily refers to the 14th section, by which they became trustees in virtue of the assignment; they are the persons to whom the court direct it to be made; its execution is the prerequisite to a discharge by the very words of the 15th section, and is the only mode in which the petitioner can comply with the oath prescribed in the 13th section.

"Had the law used the term assigns, instead of trustees, there could have been no doubt they are the persons to whom the debtor swore he would deliver and transfer all his property, debts, rights and claims, in the 13th section, to whom he was bound to execute an assignment by the 14th, on which alone the court could discharge by the 15th, or give such effect to their order made after the assignment, as declared in the 16th section. They are assignees to all intents and purposes; as such they became trustees; but however named, their character, powers, rights and duties are the same, and were complete without the 34th section, to vest in them the

estate of the petitioner at the time of the assignment; but the legislature thought proper to make provision for transfers and conveyances of the estate and effects of the insolvent, between the filing the petition and the execution of the assignment, which was the object of the 34th section, and not to repeal any preceding provision, or to dispense with the assignment.

"Hence its true construction is, that the assignment, when made, shall relate to the filing of the petition, so as to cut out all intermediate dispositions by the debtor, except in the cases provided for in the 35th section, which are exceptions to the 34th, by way of a proviso, limiting its effect. Such construction gives effect to the 36th section, according to its words, which it cannot have, if there has been no assignment, while it is in harmony with every preceding provision, as well as in effectuating the intention of the legislature in requiring the execution of an assignment before discharge. We cannot think it the meaning of the law, that a debtor should be discharged who has made no assignment; that there should be trustees who were not assignees, or that the oath of the petitioner need not be complied with, as to the act specially enjoined to be done as the basis of all subsequent action by the court or trustees.

"There is another important view which must be taken of this law. In conferring power on the Court of Common Pleas to grant relief, the first section applies only to an application made in the 'manner thereafter directed;' the second section directs that the jurisdiction of the courts 'may be exercised as follows, and not otherwise;' this section is, consequently, a limitation on jurisdiction, so far as it applies. These words are broad enough to extend to all the provisions of the law; it is certainly no strained construction to hold, that they apply to those acts which are positively directed to be done, before any subsequent action can be had pursuant to the law; and if such should be its ultimate construction, that the requisites prescribed are matters on which jurisdiction depends, the consequences may be very serious and alarming. We do not mean to say that such is the true inference to be drawn from the words of the law, or desire to be the first to give them a judicial exposition; our duty is to await the course of the courts of the State, and to follow it, unless the exigency of a case requires us to take the lead. We can decide all questions which have arisen under this law, without inquiring into the jurisdiction of the Court of Common Pleas, on the cases of the parties in this case; we can, with perfect consistency, hold that the estate of the insolvent does not pass to the trustees, without an assignment, so as to cut out the lien of a judgment rendered after the discharge, but before an assignment executed; and at the same time hold the judgment, or order of discharge, to be perfectly valid for all the purposes declared by the law. So we take this law as applicable to this case; the omission to make the assignment before the discharge does not impair its effect in protecting the debtor, but it leaves the parties free

to assert their respective rights—the plaintiff as a creditor by original right or by assignment, and Mr. Hanson as a purchaser, notwithstanding the provisions of the 34th section. Other considerations tend to the same conclusion. The words of the 34th section are, 'all the estate and property of the insolvent, at the time of filing his petition,' which cannot apply to the property in question, because the assignment made in June preceding divested the assignors of the whole estate and property, whether it was valid or void, as against creditors. If it was valid, all the right of the assignors passed to the assignees; if it was void as to the creditors, it was good between the parties, and all others, except the creditors who were intended to be defrauded, or whom it might tend to defraud. As to them, and them alone, the assignors are held to be vested in trust, without any other right, or for any other purpose, than making the property subject to debts. So that in any event there was no interest or right which the assignor could pass to the trustees for all the creditors, either by operation of law under the 34th section, or by an assignment under the 14th.

"The 34th section provides only for the case of an insolvent having property at the time of his petition, which he had not before conveyed; it is wholly silent as to the case of his having conveyed or assigned to his wife, children, or in trust for them, or to any other person, with intent to defraud creditors; such case is provided for by the 36th section, when the insolvent has made an assignment to trustees previous to his discharge. By making this distinct, substantive provision, the law clearly excludes such conveyance and transfer from the operation of the 34th section; thereby making a clear distinction between the property which had never been transferred before the discharge, and property which had been so transferred contrary to law. Whether, then, we look to the provisions of the insolvent law in connection, or the words of the 34th section alone, we are fully satisfied that an assignment by the insolvent at some time previous to the discharge, is necessary to vest his estate in the trustees, so as to prevent a subsequent judgment from becoming a lien. This section, then, does not affect the plaintiff's case, as contended by the defendants; the judgment may attach, notwithstanding the discharge, if we assume, as we do at present, that no assignment was made before the 29th September, 1838, after the plaintiff had made a levy; an assignment was then made, and this brings up the construction of the 36th section, which provides that when a conveyance is made prior to such assignment to defraud creditors, the trustees shall have power to recover the estate so conveyed. It follows, that if they do recover it, it must be distributed among all the creditors in the same manner as if the insolvent had been seised or possessed of it, at the time of such assignment. So construed, this section would take the property in controversy from Mr. Hanson, as a purchaser under the assignment of June, 1837, however fair his purchase may have been; it is very

analagous to the enacting clause of the 13th Eliz., without the aid of the 6th section of that statute; there is no proviso to except a purchaser for valuable consideration without notice of the fraud between the assignors and assignees. There is, indeed, no declaration in terms, that the fraudulent conveyance shall be void, but it is done in effect by declaring that the trustees may recover and dispose of what has been so conveyed, 'as fully and effectually' as if the insolvent had actually been seised at the time of the assignment, which to all intents and purposes annuls the fraudulent conveyance, and takes the estate from a purchaser under it, as would the 13th Eliz., but for the exception in the 6th section.

"Literally construed, it would also destroy the lien of plaintiff's judgment, and any right founded on it, other than his rateable proportion of the general effects of the insolvent; giving it this effect, the 36th section would supercede the 13th Eliz., the common law on which it is founded, and deprive the creditor, who was attempted to be defrauded, of rights which have been unquestioned for two hundred and seventy years. It has never been doubted, that a creditor who takes measures for avoiding a fraudulent conveyance of real or personal property, by levying on and buying it under his judgment, or a stranger who is such purchaser, shall hold and enjoy the property for his own use; and we cannot believe it was intended by the act of 1836 to uproot the whole system of jurisprudence which has grown out of the 13th El., or that it is the fair construction of the provisions of the 36th section. In our opinion, they apply to a case where no creditor having previously acquired a lien or right to property fraudulently conveyed, the trustees proceed to invalidate the conveyance; and that it does not apply where the property is in the hands of a bona fide purchaser for valuable consideration, without notice of the fraud before the assignment made by the insolvent. We will not be the first to so construe a State law, which will produce the most mischievous effects on a long settled system of jurisprudence.

"We have been asked to consider the assignment as having been made before the discharge, but the insolvent record shows the contrary—it shows the form drawn up, unsigned, and without date, the actual execution by the order of the court on the 29th of September, 1838, as of that date, together with the refusal of the court to give it a retrospective effect to the time of the discharge or petition. This was the proper course to pursue, leaving it to be thereafter decided what was the legal effect of the proceeding, when it should be brought in question.

"There are cases where a court may order that an act be done presently, and to take effect as if done before, but the cases are few; the power is a delicate one, which ought to be used with extreme caution, so as to do no injustice to third persons, or in any way prejudice their rights; when it is intended to be exercised, it should be done in clear terms, and an entry thereof made of record—it is

even then viewed with much jealousy, and is never favoured—vide 2 Pet. 521, &c. In this case it may well be doubted whether the Court of Common Pleas could give to an assignment actually made in September, 1838, the effect of taking away the lien of a judgment rendered in January preceding, and which the judgment creditor had followed up by a levy, while the assignment remained unexecuted; that court very properly refused to make such order, and this court will not consider that as having been done, which was not intended, and ought not to have been done. 2 Pet. 522—3."

And thereupon the said defendants further excepted to the following matters or propositions of law contained in the said charge to the jury, to wit:

"Having disposed of these objections, we now proceed to another, which was much pressed during the trial—that the plaintiff had not shown a legal title to the property in controversy, so as to enable him to recover in this action. As this objection presents questions of fact, as well as of law, we must refer to the evidence of title, which has been exhibited by the plaintiff, as direct proof of its being in him in virtue of the sheriff's sale, together with the principles of law by which the evidence must be applied.

"A legal title is the right to real estate, derived fromt he original owner of the soil, and passed to the party claiming it by deed, will, descent or legal process operating as a deed by force of a law.

"An equitable title is one acquired without a regular deed or formal conveyance of any description, which a Court of Law considers as a transfer of the estate of one to another; but a title so acquired, as in equity, justice and good conscience to vest the beneficial interest—the real and substantial ownership of the property—in the person claiming it. In such a case, a Court of Equity, whose appropriate and peculiar jurisdiction is to act upon the conscience of the person who holds the formal or legal title to the property, compels him to convey it to the person to whom he is bound in good conscience to make a complete title, thus uniting form to substance.

"As when B sells to A, for a price which is paid by A, who takes possession and makes valuable improvements, but B holds the title, and refuses or neglects to make a deed, A is the real owner in equity, but B is the owner in law, and the contract of purchase is by the most solemn articles of agreement under seal, with covenants to make a deed on payment of the purchase money. B may turn A out of possession by ejectment in a court of law, because such courts cannot recognize merely equitable titles. But a court of equity would prevent B from following up his legal right, and order him to convey it; such is the course and settled rule of this court, though in the courts of this State, A might successfully defend himself in an ejectment. State courts act in the same case and at the same time, as a court both of law and equity, which we cannot do, as the courts of the United States are, by the constitu-

tion and laws, organized on common law principles; and though we have full common law and equity jurisdiction, we must exercise it in distinct capacities, as judges or chancellors, as the nature of the case may require.

"There are, however, cases where a court of law will not inquire whether the title of a plaintiff is legal or equitable; a tenant will not be allowed to dispute the title of his landlord while he holds under him; a defendant in a judgment cannot contest the title of one who holds a sheriff's deed under a sale on the judgment, nor any person who holds possession under them, by *priority* arising after the judgment; in all such cases the plaintiff will recover possession, so that this objection cannot be made by Mr. Joseph L. Moss or Isaac Phillips.

"So where both parties claim under the same title, neither is bound to trace theirs beyond the common source, or to show any other right than what appears there; the court will not inquire whether such title is legal or equitable. The right of possession depends on the question—in which party the title is invested. Thus in the present case, both parties claim the right of possession to the Chesnut street lot, under George Thompson's deed to Isaac Phillips. It is, therefore, not necessary for the plaintiff to show the nature of the title of Thompson, or to trace it through the title deeds to the first owner; the only contest between the parties being—to whom the right conveyed to Philips has passed—and neither can call on the other for the exhibition of any other title than that under which both assert the right of possession. As to the house in Sixth street, the case may be different, if the assignees have any claim to it, by any other than the title of J. L. Moss and Isaac Philips, or Mr. Hanson is clothed with the character he assumes, or claims by a title adverse or independent. He has assumed the position of a bona fide purchaser, for a valuable consideration, without such notice as the law requires; if this position is well taken, Mr. Joseph M. Moss and David Samuel can have no interest in either piece of property, or be actors in the suit in opposition to the plaintiff in any other than a derivation right as before stated.

"Claiming under the assignment of June, 1837, under the Orphans' Court sale, or under Mr. Hanson as a purchaser from them, their possession, if they had any, on the service of the writ, must be rightful or wrongful, as the case may be in evidence; it is, however, clear, that in their own right, by the assignment, they cannot controvert the title of Isaac Philips and Joseph L. Moss, or call on the plaintiff to produce any other. Whether they do claim under the orphan's court sale, how or what they do or can claim by it, will be considered hereafter; any claim they can have under Mr. Hanson, depends on the nature of his title, and how he has a a right to claim, and does claim the property.

"If he is clothed with the character he assumes, that of a purchaser of the title of Robert Philips, in virtue of the orphan's

court proceedings, the deed of Isaac Philips to the assignees, and theirs to him, by a right adverse to the title of the assignees, as conveyed by the assignment, Mr. Hanson may rely on it in opposition to the equitable right of the assignors, as a distinct, independent right, passing to him in virtue of the judicial proceedings, and not in virtue of the assignment. But if he does not stand as the purchaser of an adverse title, but claims under the assignment, through the deed of the assignees founded upon it, he cannot contest the title of the assignors, even if he assumes another position as a purchaser, which is this: a purchaser from the assignees, bona fide, for a valuable consideration, without any notice of any fraud in the assignment. Conceding for the present, that in this position he might hold the property, though the assignment was fraudulent, he neither need, or could contest the title under which he claimed; for such as it was, his purchase would protect him from all the consequences of fraud between the assignors and assignees, unless it was affected by the plaintiff's judgment and proceedings upon it.

"The only position, therefore, in which Mr. Hanson can set up a title adverse to that of J. L. Moss and Isaac Philips, or call on the plaintiff for any other, is as a purchaser under the orphan's court sale; considering him at present as so standing, the present question for consideration is, whether the legal title of the Sixth street lot was in the heirs of Robert Philips, or in Joseph L. Moss and Isaac Philips, as the firm of R. & I. Philips, at the time of the judgment in January, 1838.

"The plaintiff may show a legal title, without producing a deed from Robert Philips to R. & I. Philips; being a purchaser at sheriff's sale, he is not supposed to have the title papers, or bound to produce, or to account for them; it is sufficient if he can prove that a deed once existed, or if he can prove such facts as will authorize a jury to presume that one had been made, if notice was given to those in whose possession it is presumed to have been, to produce it at the trial."

And thereupon the defendants further excepted to the following matters or propositions of law contained in the said charge to the jury, to wit:

"In an ordinary case, the jury must decide from the evidence before them, what facts have been proved; but in this case there is one feature which is rather unusual, and to which it is necessary to call your special attention, as a matter which has an important bearing on some of its prominent points. Timely notice was given by the plaintiff's counsel to the counsel of the assignors and assignees, to produce at the trial the books of R. & I. Philips; no objection was made to the competency of the notice—they were called for, but were not produced till the day after the evidence was closed, and at the moment when the court had called on the plaintiff's counsel to address the jury. No reason was assigned

for their non-production, save the reference to the illness of Mr. Moss; but Mr. Philips was in court; notice was given to Mr. Hanson, though none was necessary, as the books could not be presumed to be in his possession. That they could have been produced before the evidence on both sides was closed, can scarcely be doubted, when so many were produced afterwards. Their production, then, was no compliance with the notice; the plaintiff could not, without leave of the court, have referred to them; he was not bound to ask it, and had a right to proceed, as if they had not been produced.

"Mr. Hanson had a right to call for the books; claiming by an adverse title, he might have moved the court for an order to produce them, but he made no effort to procure them; we say so, because there was no evidence that he did in any way endeavor to have them produced, although the court, in their opinion on the motion for a non-suit, plainly intimated the effect of their non-production.

"There has, therefore, been no satisfactory or reasonable ground assigned for their having been kept back, and the plaintiff has a fair case for calling on you to presume, whatever the law will authorize you to presume as to the contents of the books. On this subject the 15th section of the judiciary act has made this provision: 'That all the said courts of the United States shall have power, in the trial of actions at law, on motion and due notice thereof being given, to require the parties to produce books or writings in their possession or power, which contain evidence pertinent to the issue, in cases, and under circumstances where they might be compelled to produce the same by the ordinary rules of proceeding in chancery; and if a plaintiff shall fail to comply with such order to produce books or writings, it shall be lawful for the courts, respectively, on motion, to give the like judgment for the defendant, as in cases of non-suit; and if a defendant shall fail to comply with such order to produce books or writings, it shall be lawful for the courts, respectively, on motion as aforesaid, to give judgment against him or her by default.' This enables courts of law to apply the same rules and principles, where papers or books are withheld, as have been adopted by courts of equity, which are these, in our opinion, as long since expressed in Askew v. Odenheimer, 1 Baldwin, Rep. 388–9."

And thereupon the said defendants further excepted to the following matters or propositions of law contained in the said charge to the jury, to wit:

"It must not, then, be supposed that the only effect of the suppression or keeping back books and papers, is to admit secondary evidence of their contents, or that the jury are confined, in presuming their contents, to what is proved to have been contained in them; a jury may presume as largely as a chancellor may do, when he acts on his conscience, as a jury does, and ought to do, and on the same principles.

"Mr. Bridges states that he believes there is an entry on the books, of the transfer from Herring to Robert and Isaac Phillips, but don't know how the transfer was made. It is in proof, by the clerks of Robert and Isaac Phillips, that an account was open on their books with the Sixth street lot; that the money of the firm was applied to the payment of the consideration money to Herring; one of the persons who erected the new building says he was paid by the notes and checks of the firm; a tenant proves that Joseph L. Moss rented it in the name of the firm, who furnished it to the amount of $1,000, and the tax collectors prove the payment of taxes by the firm. In opposition to this evidence, the defendants offer nothing; the books of the firm are suppressed, when they could and ought to have been produced; and the sole reliance in support of the title of Robert Phillips, is the deed from Herring. If you believe the witnesses, Robert Phillips never was the sole and real owner of this property on the first purchase; and if you think the facts stated are true, you may and ought to presume, that if the books had been produced, they would have shown that the payment of the whole purchase money, and the whole expense of the improvements made on the lot, were paid by the firm; that it formed an item of their joint estate, and was so considered by the partners. You may, also, and ought to presume, that the production of the books would have been favorable to the plaintiffs, and unfavorable to the defendants, in any other aspect as bearing on the ownership of this property. On such evidence we would, as a court of equity, hold that there was such a clear equitable title in the firm, that Robert Phillips, or his heirs, were bound, on every principle of justice, conscience, and equity, to make a conveyance, so as to make that title a legal one. And when it appears that the members of the new firm had conveyed it in trust for creditors, as their joint property, that the grantees had accepted the conveyance, and sold the property under the assignment; that the purchaser from them had accepted a deed reciting theirs, and no other title, we cannot hesitate, as judges in a court of law, in instructing you that you may presume that such a conveyance from Robert Phillips, or his heirs, has been made, as they were bound in equity and good conscience to make.

"Legal presumptions do not depend on any defined state of things; time is always an important, and sometimes a necessary ingredient in the chain of circumstances on which the presumption of a conveyance is made; it is more or less important, according to the weight of the other circumstances in evidence in the case. Taking, then, all in connection, and in the total absence of all proof of any adverse claim by Robert Phillips, or his heirs, from 1832, every circumstance is in favor of the presumption of a conveyance; and we can perceive little, if any weight in the only circumstance set up to rebut it, which is the proceedings in the Orphans' Court. You will give them what consequence you may think they may deserve, when you look to the time and the circumstances under

which they were commenced, carried on, and completed by a sale for $22,500, which counsel admit was not paid, and also admit that the sole object was to extinguish the mere spark of legal right remaining in Robert Phillips, or his heirs, and not because he or they had any beneficial interest in the property. If there was lawful ground for presuming the existence of a conveyance from him, or them, before November, 1837, we should think that anything accruing afterwards was entitled to no weight in rebutting such presumption: and were we in the jury box, we would think it operated the other way. It was for the interest of the assignees and assenting creditors to consider the conveyance as not made; for if it had been made previously, a non-assenting creditor to the assignment might take it under a judgment, as was done by the plaintiff, and thereby hold it, if the assignment did not pass the title; whereas, by taking the deed as not made, the Orphans' Court sale would vest the title in the assignors, and leave no legal right on which a judgment against Joseph L. Moss and Isaac Phillips could attach. As, however, this is a matter entirely for your consideration, we leave it to your decision, with this principle of law for your guide: that on a question whether a conveyance shall be presumed or not, the jury are to look less to the direct evidence of the fact, than to the reasons and policy of the law, in authorising them to infer that it was made, if the party who was in possession of the legal title, was bound in equity to convey to the real, true, equitable owner. This legal presumption is not founded on the belief alone that the fact existed, but much more on those principles which enforce justice and honesty between man and man, and tend to the security of possessions which have remained *uninterested* and undisturbed. Should your opinion be in conformity with ours on this point, you will presume that there was a deed from Robert Philips, or his heirs, competent to vest the title to the Sixth street lot in the firm of Robert and Isaac Philips—that it so remained at the time of the assignment, and that it was by such conveyance as would enable them to enjoy the property against Robert Philips and his heirs."

And thereupon the said defendants further excepted to the following matters or propositions of law contained in the said charge to the jury, to wit:

"Should you think otherwise, you will find accordingly; but even then, your finding would not effect the merits of the case, because Mr. Hanson, or those under him, cannot make the objection of the want of a legal title, unless he stands firm in the position he assumes—that of a bona fide purchaser for valuable consideration, without notice, such as the law requires.

"There are two classes of purchasers of this description.

"*First.* Those who are thus referred to, and the requisites to

clothe themselves with such character prescribed by the Supreme Court of the United States, in Boom vs. Chiles, in 10 Pet. 210 to 212. "It is a general principle in Courts of Equity, that when both parties claim by an equitable title, the one who is prior in time, is deemed the better in right—7 Cr. 18; 18 J. R. 532; 7 Wh. 46; and that where the equities are equal in point of merit, the law prevails. This leads to the reason for protecting an innocent purchaser, holding the legal title, against one who has the prior equity; a Court of Equity can act only on the conscience of a party; if he has done nothing that taints it, no demand can attach upon it, so as to give any jurisdiction. Sugden on Vend. 722. Strong as a plaintiff's equity may be, it can in no case be stronger than that of a purchaser who has put himself in peril by purchasing a title, and paying a valuable consideration, without notice of any defect in it, or adverse claim to it; and when, in addition, he shows a legal title from one seised and possessed of the property purchased, he has a right to demand protection and relief, 9 Ves. 30–4, which a Court of Equity imparts liberally. Such suitors are its most especial favorites. It will not inquire how he may have obtained a statute, mortgage, incumbrance, or even a satisfied legal term, by which he can defend himself at law, if outstanding; equity will not aid his adversary in taking from him the tabula in naufragio, if acquired before a decree.

"But this will not be done on mere averment or allegation; the protection of such bona fide purchase is necessary only when the plaintiff has a prior equity, which can be barred or avoided only by the union of the legal title with an equity, arising from the payment of the money, and receiving the conveyance without notice, and a clear conscience.

"*Second.* Those who claim the character of purchasers under the 6th section of the 13th El., the requisites of which are thus defined by the law: 'That this act, or any thing therein contained, shall not extend to any estate or interest in lands, tenements, hereditaments, leases, rents, commons, profits, goods or chattels, had, made, conveyed, or assumed, or hereafter to be had, made, conveyed or assumed, which estate or interest is or shall be upon good consideration and bona fide lawfully conveyed or assumed to any person or persons, or bodies politic or corporate, not having at the time of such conveyance or assurance to them made, any manner of notice or knowledge of such covin, fraud, or collusion as is aforesaid; any thing before mentioned to the contrary hereof notwithstanding.'

"Our first inquiry must be, whether Mr. Hanson comes within the first class of such purchasers, by any evidence he has adduced.

"He claims the Chesnut street lot under the title of Isaac Philips, by the deed of the assignees, as the estate of Isaac Philips, without any claim by any outstanding legal title. As to this property, then, he does not come within the first class; he relies exclusively on

the deed of Thompson to Isaac Philips, the assignment, and the deed of the assignees. He claims the Sixth street lot under Robert Philips, and not Isaac Philips, and adduces as evidence thereof, the following chain of title:

"The deed from Herring; the Orphans' Court proceedings; the sale under them; the deed from Isaac Philips, the administrator, to Joseph M. Moss and David Samuel, on the 30th January, 1838, and the deed of 10th May, 1839, (made by them pursuant to the public sale to Mr. Hanson, on the 30th April, preceding,) recorded on the 23d May, 1839, and there rests his case as to the adverse title of the Sixth street lot, as one distinct from the Chesnut street property. On inspecting the deed for the Sixth street lot, there is found no reference to the title of Robert Philips, or the Orphans' Court sale; the whole recital of the title is the assignment of June, 1837, and there is no other covenant in the deed than against the acts of the grantors, who execute the deed as assignees; and not as purchasers from Isaac Philips, of the title of R. Philips, in virtue of the Orphans' Court proceedings.

"No evidence is offered of any agreement, or even intention to sell, or purchase, any other than the title which passed by the assignment; so that there is no obligation, legal, equitable, or moral, on the assignees, to make any conveyance of the right of Robert Philips, unless Mr. Hanson can affect them with some fraud, or show some accident or mistake under which he accepted the conveyance. The form of this deed is in substance the same as the deed for the Chesnut street lot; the recital of the assignment the same, and both made in the capacity of assignees. There seems no one feature of difference between the two purchases, which can make one refer to the title of Robert, and the other to Isaac Philips; and if you believe the evidence of Mr. Blackstone, there is one fact in evidence which goes strongly to prove that he neither purchased, or intended to purchase any other title than what his deed purported to convey. Mr. B. says, that after the ejectment was served on him, he had a conversation with Mr. Hanson, and expressed some doubt about paying the rent; to which Mr. Hanson replied that the property was his, he had purchased it at auction, under the best legal advice. If this was so, and he had purchased the title of Robert, and not Isaac Philips, or that of the firm, it is scarcely credible that he would not have been advised to at least take a deed with a reference to, and recital of that title, and that he would not have done so; on the contrary, he took a deed in the form it appears, and claimed exclusively under it. By reference to the auction sale, it appears that there was no notice of the title of Robert Philips, but the title under the assignment was stated to be good, and the sale made under it. In the absence of all explanatory evidence, the legal construction of the deed is, that it conveyed, and purported to convey no other than the title of the assignors, and that no legal presumption can be made that any

other right passed, especially when it does not appear that Mr. Hanson had, at any time before this trial, claimed under the Orphans' Court sale, or the title of Robert Philips. On this ground alone, Mr. Hanson has failed to bring himself within the principles established by the Supreme Court, as necessary to constitute a purchaser of the first class: and there are other circumstances in the case equally conclusive to exclude him. Vide 10 Pet. 211–12.

"We are next to consider his character as a purchaser at the assignees' auction sale of the title which is claimed to have passed by the assignment.

"The evidence of his filling this character is his bid at the auction, his acceptance as a purchaser, and the deed from the assignees, its record, his possession of the property, and claim of title by the purchaser; but no evidence is offered of the actual payment of any money, independently of the recital of the deed and the receipt at the foot of it, which is for the whole consideration, while the counsel of Mr. Hanson distinctly admit before you, that only one-third has been paid. There is, therefore, no pretence set up that any more was actually paid, or that the recital of the deed, or the admission in the receipt is correct; but we do not think proper to put this part of the case on the admission of counsel, as they might fairly contend that the admission should be received as made, whereby the payment of one-third would be taken as part of the admission, or the whole be disregarded. It is better and safer to take the case as the law considers it, independently of any admission, and according to well established principles, as applicable to a purchase set up under the circumstances in evidence, of an estate in lands, conveyed 'upon good consideration, bona fide lawfully conveyed, to a person not having at the time of such conveyance any manner of notice or knowledge of such covin, fraud, or collusion' as is recited in the law. You will observe, that by the preamble and enacting clause of the English statute, all conveyances, bonds, judgments, &c., made with intent to hinder, delay, or defraud creditors, are declared actually void, although the person who accepts of them is no participator in the fraud; it is a sweeping, general denunciation of such acts as unlawful, having no effect as against the person designed to be defrauded, but good between the parties and all others; the consequence whereof is, as we have heretofore held, that the fraudulent grantor remains the legal owner of the property, not because his deed is not binding on him, or his heirs, but the law has put it out of his power to divest himself of property, by a deed designed to defraud creditors; he therefore holds the legal title in trust for his creditors, and for the purpose of applying it to the payment of his debts, is as fully the legal owner after the conveyance as before, though as to all others the estate is in the fraudulent grantee. 1 Baldwin, 356.

"Such is the effect of the enacting part of the statute, which would

not protect the fairest of purchasers for the want of any words limiting or qualifying its imperative terms, and precludes any construction or exception; but the 6th section operates as an exception in the case provided for, which is a conveyance, &c., designed by the grantor to defraud creditors, but in which the grantee has in no way participated, or had any notice or knowledge of any fraud before the conveyance—Magniac vs. Thompson, 7 Pet. 389, &c. Mr. Hanson claims to be a purchaser of this description from the assignors under the assignment, and in virtue of the proviso in the law, claims to be protected; although the assignment was fraudulent between the parties, the question now to be considered is, whether, if the assignment be void, he can be in a better situation than the assignors; in deciding which, it must be assumed that the assignment is void as to creditors, unless Mr. Hanson can hold what the assignors cannot. The true enquiry then is, not what was the character of the assignment, but his character as a purchaser from the fraudulent grantee; for if the assignment is valid, then the plaintiff's judgment was no lien, and he can have no right. We must, therefore, see whether Mr. Hanson fills the character of a purchaser under the 6th section of the 13th El., assuming the assignment to be fraudulent for the purpose of this inquiry, and this only.

"The first question is, what he is bound to prove; the general answer is at hand, that claiming under an exception to the law, he must bring himself within it, or he comes under the enacting clause; and he must prove it by other evidence than what is repudiated in the law by clear, comprehensive words, as not sufficient to take a conveyance out of it; they are 'any pretence, color, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding.'

"No words can better or more clearly apply to the consideration, or uses expressed in a conveyance, or other recital, averments, or declarations, which are set forth as the reasons of making it; hence it is incumbent on the party to do more than to produce the deed containing them; for if the mere statement of the parties imposes on a creditor the necessity of proving their falsity, he might not be enabled to do it, as the matters so recited are not within his knowledge. But if they exist, they must be known to the parties to the deed, and can be easily proved; if the law was otherwise, it would be easy, as the Supreme Court of the United States say, 4 Wh. 507, for the grantor to make out such a case by his own recital, that 'there would no longer exist any difficulty in evading the rights of creditors.' The Supreme Court of this State have also established it as a rule, that whoever sets up a plea of purchase for valuable consideration, must support it by other evidence than the conveyance, or the receipt at the foot of it, which is only the acknowledgment of the grantor. We cannot better state the law on this subject, than in the words of that Court, in Rogers vs. Hall, 4 Watts, 362. 'Though in the ab-

sence of proof to the contrary, the presumption is in favor of the fairness of a transaction, yet flight and an absolute general assignment are in themselves circumstances demonstrative of fraud; and though not conclusive, they undoubtedly impose on the assignee the necessity of elucidation. He is the most cognizant of the transaction, and best able to explain it; and why should the business of explanation be laid on the creditors placed by him in the dark, though entitled to light? The question is on the existence of a valuable consideration; and it would be against a fundamental rule of evidence to burthen them with the necessity of producing negative proof. The policy of handling these transactions with little attention to tenderness, is obvious and uncompromising. They are ulcers of frequent occurrence in practice, which require to be thoroughly probed, and, if necessary, laid open to the bone, and on him be the consequences who withholds the means of doing so.

"But the defendant claims to hold discharged of the fraud, if such there were, by having, as he alleges, purchased without notice of it. A decision of the question of notice is uncalled for by the circumstances, and we give none. There was neither proof of valuable consideration, nor the semblance of it; and nothing is clearer than that a plea of purchase for value must be sustained by other evidence than the conveyance. Even the receipt of the debtor is not proof against his creditor claiming paramount to the debtor's grantee, inasmuch as his fraudulent conveyance is no conveyance at all against the interest intended to be defrauded. His receipt or other acknowledgment of payment, therefore, is the act of a grantor, done subsequently to a title derived from him, which, consequently, may not be prejudiced by it. Now, the defendant produced nothing but the conveyance, with whatever collateral evidences of payment may have been embodied in it, or appended to it; and they fell far short of proof of actual payment; for, giving a security for the purchase money, which in practice is often the consideration for a receipt at the foot of the conveyance, is not enough to entitle him to the character of a purchaser for valuable consideration, and the Court properly rejected the prayer for protection on that ground." 4 Watts, 362.

"A deed is evidence of a conveyance in fact, and when the payment of the consideration is proved, it is prima facie evidence of a purchase presumed to be fair till the contrary appears, unless there is something on the face of it to excite suspicion.

"This rule is founded on the same sound reasons as the rule that an asserted purchaser must prove the payment of the consideration recited; for a party who alleges fraud, ought to be prepared to prove it, and it is as difficult for a party claiming under a deed, to prove affirmatively his bona fides, or want of notice, as for a party claiming against it, to prove the non-payment of the money. Hence the law has been long and well settled, that on the production of

a deed of conveyance, it shall be presumed to be as to fraud, &c., what it purports on its face to be, until some evidence is brought forward to impeach it in some particular which the law makes a requisite to its validity. How far the evidence goes to prove the fact, which will invalidate the deed, is for a jury to decide, if the court shall be of opinion that it conduces to prove it. Whatever would satisfy a jury that the fact existed, if the law would authorise them to presume it from the evidence, or if the court on a demurrer to the evidence would render judgment for the party offering it, then the burthen of proof is shifted on to the party offering the deed, and he must bring himself within the exception or proviso of the statute, in order to make out a case under it. The creditor need not offer evidence to disprove every requisite to make out a valid purchase; it suffices to throw the proof of every requisite on the alleged purchaser, if the creditor can satisfactorily establish the want of one; in such case the general principle applies, that a party who claims under a proviso or exception to a law, must make out a case which brings himself within it, or he comes within the enacting clause, standing in no better position than the fraudulent grantor against the rights of the creditors attempted to be defrauded. In cases of this description an important inquiry is—had the purchaser such notice as affects his purchase unfavorably? Purchasing under the assignment, the law presumes he had notice of it—its contents, whatever it referred to, and 'of such other facts as those already known necessarily put him on inquiry for, and as such inquiry, pursued with ordinary diligence and prudence, would bring to his knowledge. But of other facts, extrinsic of the title, and collateral to it, no constructive notice will be presumed, but it must be proved.' 2 Mason, 536. Besides, if there is any thing on the face of the deed of assignment, to which the law imputes fraud, or from which a jury can infer it, the purchaser has, by legal intendment, constructive notice of it, so as to impair his purchase; so as to any matter in the deed from assignees to him, the same consequences follow.

"If a purchaser has notice of a fact, he is presumed to have notice of the consequences. 1 Gall. 42. It is in full proof that the following notice was publicly read from the rostrum, at the sale by the assignees on the 30th of April, when Mr. Hanson became the purchaser, by a note in writing signed at the time.

"Bidders will take notice, that the property on the north side of Chesnut street, 42 feet west of Schuylkill Seventh street, being 66 feet front by 158 feet deep, and also that on the west side of Delaware Sixth street, between Market and Chesnut streets, formerly known as Rubicam Hotel, have been levied upon as the property of the late firm of R. & I. Phillips, and are actually advertised for sale by the sheriff, and that the right of the assignees of R. & I. Phillips to convey any title to either of said properties, is disputed and denied. CHRISTOPHER FALLON.

April 29, 1839."

"The Chesnut street lot was advertised and sold as 'clear of all incumbrance,' 'title indisputable'—the house and lot on Sixth street as 'clear of all incumbrance;' yet, if you believe the witnesses, here was actual notice that the title of the assignees was disputed—that there was an order for the sale of the property under a levy, and that it was then advertised for sale by the sheriff. It was, therefore, notice of an incumbrance by some act of record which would authorize the sale—it referred to the advertisement which pointed to the nature of the incumbrance, and was in law sufficient to put Mr. Hanson on inquiry at least. And if he had pursued it with due diligence and prudence, he must have found the judgment and other proceedings of record as they appear on the transcript read, which, connected with the notice, would show an adverse claim, and by a creditor of the assignors, prosecuted with great diligence by the plaintiffs, contested by the assignors and assignees, and then approaching a consummation by effective process.

It is said, that this notice was not such as the law requires, to taint Mr. Hanson's purchase, because it did not specify the particular grounds on which the right of the assignors to convey was contested, by stating, that the assignment was void by reason of fraud; and therefore, the law holds that he is deemed to have had 'no manner of notice or knowledge of the fraud, covin, or collusion,' between the parties to the assignment, this notice not being sufficient to put him on inquiry. Yet if the law were so, it seems that this or some other notice did put him on inquiry, if he consulted counsel and purchased under their advice.

"This objection has assumed a strange aspect by the remarks of counsel, that if the written notice had contained an allegation of fraud in the parties to the assignment, a suit or prosecution for a libel would have been the consequence; while it is contended, that the want of such charge makes the notice inoperative, as if the law compelled a creditor to commit a civil injury, or a public offence, in order to put a person on inquiry about the title he was about to purchase. On the other hand, if Mr. Hanson had not examined the subject fully, and satisfied himself that there was no fraud, how did it happen that when the terms of the sale were to convey a 'title clear of all incumbrance,' on any of the property, and an 'indisputable title' to the Chesnut treet lot, with actual notice of an incumbrance and dispute of the title—that he accepted of a deed with only a covenant against incumbrances by the grantors, or suffered by them, taking no security against a judgment against the assignors. If he consulted counsel on the kind of title he should take, the form of the deed, and the covenants to be inserted, and was advised to accept a deed without any covenant against the very incumbrance referred to in the notice, and to pay his money, to the amount of $36,000, on the transfer of the right of the assignees without better warranty, the client

must have stated a strange case to his counsel, if he was advised that he filled the character of a 'bona fide' purchaser for a 'valuable consideration, without any manner of notice or knowledge, &c.' Mr. Hanson was not bound to accept a conveyance without covenants of warranty to the extent of the terms of sale; he might repudiate the purchase on any other terms than those stated in the notice of sale by the auctioneer; and if, when he accepted such a deed as he now produces, he shall be considered by you as filling the character he assumes, we think you must presume very largely and liberally in his favor, if you think he has acted with reasonable diligence and due prudence. Under all the circumstances of the case, our view of the evidence is very different; you will, however, decide on the facts for yourselves, bearing in mind, however, that the notice was sufficient, in law, to put him on inquiry into the fraud set up, to set aside the assignment. (3 Penna. 66–7.)

"There are other circumstances in this case which may affect the nature of Mr. Hanson's purchase, and his character as a purchaser, after the acceptance of the deed of the 10th of May, which are worthy of your consideration. The sheriff sale took place on the 20th of May, at which Mr. Fallon attended on behalf of the plaintiff, and Mr. Ingraham for the assignees. Mr. Fallon states, that Mr. Ingraham gave verbal notice that the property about being sold, belonged to the assignees, and had been assigned to them before the judgment. Mr. Ingraham states, that, on behalf of the assignees, he gave notice, that the property did not belong to the defendants in the judgment at the time it was rendered, and referred to the assignment; but neither state, that any notice was given, that the property selling had been conveyed by the assignees to Mr. Hanson; that he was present, or any one for him; it also appears, that the deed to him was not put on record till the 23d of May, 1839. Under such circumstances, Mr. Hanson rests his case as a purchaser on his paper title, without producing a witness to prove the payment of any money, or the delivery of the deed in fact; he does not produce any evidence that it was recorded by him, or offer any reason for the omission, but asks you to presume from his paper title, that he has made out all the requisites of a purchaser, such as is protected by the law from the effects of any fraud, which may attach to the assignment. If he has paid one-third of the purchase money, it cannot well be doubted that he can prove it affirmatively, and so of the delivery of the deed, and its being put on record by him. But he adheres to his perilous position, and asks you to presume that he has done that, of which he has offered no other proof than the acknowledgment of the assignees in the deed, and their receipt at the foot; that the grantors delivered the deed, without calling the witnesses to its execution, and that it was recorded by him as a purchaser.

"We will not say that you cannot presume these things, and overlook those circumstances which would authorize you to make a contrary presumption in the three particulars; but we feel bound to say, that in your places we would not so presume.

"Should your opinion coincide with ours on the evidence and facts of the case, Mr. Hanson would not be considered to be the purchaser who is protected by the law, as to any of the requisites mentioned; but the consequences are the same, if he fails in any one. To be so, he must be, in your opinion, not only a purchaser without any manner of notice or knowledge of any fraud in the assignment, such as the law requires to be given to him; he must also be a purchaser for a valuable consideration, actually paid, and the property must have been bona fide conveyed to him, pursuant to the purchase, so that the purchase must be in all respects an absolute one, such as it purports to be. If you are not satisfied that this is the character of his purchase, and his as a purchaser, then he is in no better situation than the assignees; if you think otherwise, you may find a verdict for the defendants; if so, we must request you to find it subject to the opinion of the court on the point reserved, which is, whether if he is in fact a purchaser such as the 6th section of the law defines, he can hold the property against the plaintiff, if the assignment is fraudulent on its face. On that subject we do not think it proper now to express any opinion; it is a pure question of law, which we have not had time to examine fully during the trial, and it will better the exigency of the case to reserve it."

And thereupon the said defendants further excepted to the following matters or propositions of law contained in the said charge, to wit:

"We now come to the enquiry whether the assignment is valid or void.

"It is alleged to be fraudulent in fact, and in law. Fraud in fact consists in the intention to prevent creditors from recovering their just debts, by any act which withdraws the property of a debtor from their reach; both parties must concur in the illegal intention. 1 Bald. 356–7. S. C. 7 Pet. 398, &c. But the least degree of concert or collusion between the parties to an illegal transaction, makes the act of one the act of all. 4 Watts, 361. Fraud in law consists in acts which, though not fraudulently intended, yet as their tendency is to defraud creditors, if they vest the property of the debtor in his grantee, they are void for legal fraud, which is deemed tantamount to actual fraud, full evidence of fraud, and fraudulent in themselves, the policy of the law making the acts illegal. 1 Bald. 356, 533. The alleged acts of fraud are numerous, covering a large space of time, but all are offered in evidence as bearing on the assignment; they are competent evidence to im-

peach it, if the plaintiff has satisfied you that they tend to show the intention of the parties at the time of making it. With this object, you may take into consideration whatever preceded or followed it, if the circumstances show a connected chain of facts leading to, or following the assignment, and they can be in any way brought in to explain its nature and character. But proof of fraud in any transaction wholly unconnected with this, or not tending in any way to affect its fairness in fact or law, ought not to be regarded.

"Fraud must be brought home to this transaction, but as to acts which led to it, which were preparatory, and with reference to it, as well as those which followed or grew out of it, in order to effectuate the intention of the parties, they are as proper to be considered as those which took place at the time. The character of a deed, or other act which affects creditors or purchasers, may be judged of by the subsequent conduct of the parties, which throws back light on their conduct. 5 Pet. 280, &c. You will, therefore, carry these principles into your consideration of the various acts of alleged fraud, which the plaintiff has set up to invalidate this assignment. The evidence of fraud consists, 1st, in not assigning the Walnut street house and lot, and furniture. The house and lot was conveyed to Joseph L. Moss, in 1834, for the consideration of three thousand dollars paid, and a mortgage of eight thousand dollars, which remained a lien on it; on the 20th March, 1837, he conveyed it to David Samuel, one of the assignees, for fifteen thousand dollars, by deed recorded on the 21st; Samuel re-conveyed to Moss on the 25th March, for the same consideration, by deed recorded on the 27th; on the 24th March, 1837, Joseph L. Moss gave a warrant of attorney to confess a judgment to John Moss for twenty-four thousand six hundred dollars, reciting a bond for that amount, which was not produced at the trial, on which judgment was entered on the 27th March. On the 27th May, 1837, Joseph L. Moss made a bill of sale of his household furniture to John Moss for thirty-nine hundred dollars, in consideration of the money due on the judgment of twenty-four thousand six hundred dollars; but no credit was given for the amount of the furniture on the execution which issued upon that judgment. Notice was given to produce the bond, and prove the consideration for which it was given, but neither was done; Joseph L. Moss continued in possession of the house and furniture, and John Moss paid one or more of the creditors of Joseph L. Moss and Isaac Phillips, who opposed their discharge under the insolvent act, but withdrew their opposition in consequence.

"In deciding on this transaction throughout, we must be understood as not intending, in any way, to intimate any opinion as to its effects on any controversy existing, or which may arise between Mr. John Moss and the plaintiff, or any other creditor of R. and I. Philips, or either; we look upon it solely with a reference to with-

holding the house, lot, and furniture from the assignment, as a badge, evidence, or ground of inferring fraud in the assignment, in the first place. Next, to ascertain whether Joseph L. Moss has offered any evidence to rebut the proof or presumption of fraud attending the transaction; for it is one thing, whether a debt is really owing to John Moss to the amount of the judgment, and a very different thing, whether Joseph L. Moss has given such evidence as he was bound to do, in order to repel the imputation of fraud in keeping this property back.

"He sets up the incumbrance upon it as a reason for not assigning it, and if there is in the evidence any thing proving or conducing to prove fraud in so doing, any thing from which a jury may presume fraud, he must rebut it, or the imputation may be fastened upon his conduct.

"As to the furniture, there is evidence and a strong badge of fraud in retaining possession, even if the sale was made to a purchaser, and the money proved to have been actually paid; the want of possession by the purchaser must be accounted for—it is not enough to set up family considerations; they will not suffice, unless a sheriff's sale has intervened, or some other reasons given why possession did not accompany the bill of sale. This has not only not been done, but no proof has been offered that any consideration has been paid, except that the bill of sale recites the judgment as the consideration which is set up by Joseph L. Moss as evidence that he owed the amount for which it was rendered. We will not say whether, as between John Moss and other persons, this judgment is evidence of the debt or not, without other proof, but as between Joseph L. Moss, and one of his creditors, who alleges it to be fraudulent, it is only his acknowledgment that he owed the amount, which is no evidence between him and the plaintiff under the circumstances in this case. He has been called on to prove the consideration of this judgment, which he may be presumed to have been able to do, and has not done it, but relies solely on the record of the judgment and proceedings upon it; as between the parties to this suit, this is not sufficient to rebut the fraud of this transaction, if there was any, or if he sets up Mr. John Moss as a purchaser of the furniture in part payment of the judgment, he must show it by something more than appears.

"As to the house, there is much unaccounted for in the change of apparent ownership in so short a space of time, especially when Mr. Samuel is an actor; he is an assignee in the assignments of March and June, in 1837; fraud is imputed to him, as well as the assignors; he and Joseph L. Moss can explain these transfers, but do not do it; they too rest exclusively on the papers which are in evidence, without calling a witness to explain what you will probably agree in opinion with us requires explanation. Their deeds purport to be for the consideration of fifteen thousand dollars each, with receipts at the foot for the payment in full, which must be taken as

true, or false; if true, why then was this passing of property and money from one to another in five days, we are not informed; if false, the deeds are entitled to no credit till explained.

"As to the Arch street house and lots, it appears that the lots were conveyed to Mrs. Philips in August, 1834, for the consideration of twelve hundred dollars, and an annual ground rent of six hundred and ninety-three dollars, recorded on the 23d of March, 1837, the day after the execution of the New York assignment. In September, 1834, Isaac Philips made a contract for building a house on the Arch street lots, which was finished in the summer of 1835, at an expense exceeding twenty-two thousand dollars, exclusive of furniture. In November, 1821, a house and lot in Locust street *was* conveyed to Sarah Moss, afterwards Mrs. Philips, who with her husband conveyed the same, on the 1st October, 1835, to Peter McCall, for ten thousand dollars. In April, 1837, Isaac Philips conveyed his life estate in the Arch street house and lots to John Moss, for seven thousand one hundred and two dollars, and twelve cents, being the value of his life estate therein, as estimated at the annuity office, which sum was recited and receipted for in the deed as paid. In June following, Isaac Philips made a bill of sale of the furniture remaining in the Arch street house, in consideration of five thousand five hundred and seven dollars paid, and possession stated at the foot of the bill of sale to have been delivered, to which was attached a schedule of certain articles, valued at eight hundred and sixty dollars. This sale was to Joseph M. Moss, one of the assignees.

"The assignment of June, 1837, did not embrace the house and lots in Arch street, the furniture, or any claim by Isaac Philips on the property as the separate estate of his wife, or for any debt due by her on account of the money expended in building the house. Though the furniture was not assigned, it was appraised as part of the assigned effects, and entered on the inventory thereof.

"In reference to these transactions, the same remarks are applicable as to the Walnut street property; reliance is had solely on the papers produced, without any effort at explanation of what requires it; no proof is offered of the payment of any money on the bill of sale of the furniture, or of any delivery of possession to the purchaser, other than the statement at the foot. Nor is this any evidence that any money was paid on the sale of the life estate of Isaac Philips in the house and lots, except his own acknowledgment in the deed; or any proof of what money was paid on the sale of the Locust street lot, other than the recital and receipts of Philips and wife; and there was no attempt to shew the application of any part of it, to building, or in furnishing the house.

"These circumstances, and the withholding from record the deeds to Mrs. Philips till after the declared insolvency of the firm, and their assignment of the New York effects, leave the expenditure of

so large a sum on the house, open to much ground for your consideration. It has been contended by defendants' counsel, that though these transactions may be open to suspicion, yet that they can affect only the property in question, and that the assignment is valid notwithstanding. This argument is good, so far as it respects the non-delivery of possession of the furniture; that may be considered as rather evidence or a badge of legal, than of actual fraud, not affecting the validity of the assignment, as a substantive cause for holding it void. But if you are of opinion that these transactions indicate an intention in the parties, assignors and assignees, to make such a disposition of the property of the assignors, as to place it beyond the reach of creditors, by any other means than fair and bona fide sales, transfers, and dispositions of it, or by incumbrances for debts justly due, and you can trace such intention in the conduct of the parties from March till June, and that the last assignment was the carrying such intention into effect, then it is void throughout. We do not say that keeping back property from an assignment is alone evidence of fraud—our opinion is founded on all the circumstances of the case which are in evidence, of which one of great weight in our minds is the entire want of any attempt at explanation of matters which throw the burthen of proof on the defendants. It is a bold requisition on a jury to make presumptions of facts merely from papers which contain only the declarations and recitals of the party who makes them, where direct proofs of the facts can be made if the parties desired to make it. The law makes no such presumptions in favor of the party who produces deeds, or papers, if it does not appear that he offers the best evidence of the facts which it is in his power to produce; especially if he keep back better evidence which is presumed or appears to be at his command; and a jury ought to be very cautious in making such presumptions, which may tend more to encourage than check the suppression of truth.

"The plaintiff has referred to the records of the Court of Common Pleas and the discharge of the assignees under the insolvent act, as evidence of fraud, which is reflected back on the assignment; you will judge how far it is proved by extraneous evidence, taking what appears on the record and papers attached to it as fully proved and operating according to its legal effect. But whatever may be your opinion of the matters so proved, or apparent on the record, you will refer them to the assignment; and though you may think there was fraud in the insolvent proceedings, you will not attach it to the assignment, unless you have reason to believe that it shows a fraudulent intention in some way connected with it, growing out of it, or tending to effectuate its object more completely.

"The composition with the opposing creditors was an improper act, and taints the conduct of the parties who made it with suspi-

cion, which may be thrown back on the assignment, if you think it was connected with, or formed a part of the original design.

"Much has been said about the proceedings in the orphan's court, and were it necessary for the purposes of this case to decide all the questions which have been raised in relation to them, we should have much difficulty in doing it; for there are terms and provisions introduced into the act of 1832, under which these proceedings were conducted, that are not to be found in preceding laws, and are of rather an unusual character as respects the jurisdiction of that court, being similar to the provisions in the insolvent law of 1826, which we have before noticed. If it was an act of Congress we should have less difficulty, but being a law of a State affecting many titles, we would give an opinion on its construction, only in case of its being necessary to decide the merits of this case, which we think it is not, as in our opinion it cannot avail the defendants in this case, admitting the power of the court to be undoubted to do what it has done in relation to the Sixth street property.

"On inspecting the record of the Orphan's Court proceeding, it appears there, that in November, 1837, about a month after the discharge of Joseph L. Moss and Isaac Philips, under the insolvent act, Isaac Philips, as administrator of the estate of Robert Philips, applied to the Orphan's Court for authority to sell the Sixth street lot and house, for the purpose of paying a debt due to himself, amounting to more than $35,000, which, he stated in his petition, was the only debt due by Robert Philips at his death. A sale was made in December, 1837, by the administrator, reported to and confirmed by the court; whereupon a deed was executed to Joseph M. Moss and David Samuel, the purchasers, for the consideration therein expressed and receipted for as paid, of $22,500, dated 30th January, 1838; on the back of which was a conveyance by them to Mr. Hanson, dated 10th May, 1839, for $20,300, for which a receipt was given at the foot.

"The record contains no evidence of the debt due by Robert to Isaac Philips, except the statement of the latter in his petition, verified by his own affidavit thereto annexed; yet Mr. Bridges and Mr. Welch, two of the clerks of the firm of R. & I. Philips, state, that in the books of the firm there was an account open with each partner. The petition states the exact sum due on its date to be $35,000. A schedule attached to the insolvent petition of Isaac Philips, states in detail the personal expenses of the members of the firm for nineteen years, in exact sums, which could not well be done without a reference to books or accounts; yet they are all suppressed, and the whole proceedings of the Orphan's Court are based on the mere statement and affidavit of Isaac Philips, of the existence of so large a debt, when there can be little, if any doubt, that if such a debt was due, there was better evidence in the party's power.

"In looking at the deed, we find it to express the payment of

$22,500 to I. Philips, as the purchase money; yet there is no where found any assignment of this alleged debt by Isaac Philips, nor any notice of it in his schedule in the insolvent proceedings; it must be observed, too, that Robert Philips left three surviving brothers, so that Isaac Philips was entitled only to one-third the purchase money beyond the debt justly due to himself. It appears, too, that Joseph M. Moss, one of the assignees, and Joseph L. Moss, were securities in the administration bond, and John Moss and E. L. Moss were securities approved by the court, for the appropriation of the proceeds of the sale according to law. It also appears, that, though Robert Philips died in December, 1833, no administration was taken out on his estate till in January, 1837, after a citation from the Register's Office, in conformity with the law respecting collateral inheritances. Now, if we take this transaction as it purports to be on the face of the Orphan's Court proceedings, it is this, and nothing else.

"In June, 1837, Isaac Philips and Joseph L. Moss assign to J. M. Moss and David Samuel the Sixth street house and lot, on certain trusts, as their estate, owned by them and the firm of R. & I. Philips; in December, 1837, the assignees purchase this property from Isaac Philips, as the estate of Robert Philips, for $22,500, take this amount from the residue of the assigned fund, pay it to Isaac Philips in January, 1838, and in May, 1839, convey it to Mr. Hanson for $20,300, making a dead loss to the fund assigned $2,200, beside interest.

"This is the transaction as it appears on the record and deeds; if it was so in fact, how would it look when it appeared in the accounts of the assignees as trustees, when they were called on for a settlement? Would auditors, or the court, approve of such conduct?

"In our opinion, a grosser fraud could not well be imagined, and in order to avoid its imputation, the parties who set up the Orphan's Court proceedings, as giving a title to the assignees by the deed of Isaac Philips, most distinctly admit its falsity, that no money was paid, and that the whole proceeding was got up for the purpose of extinguishing the mere legal right, which was supposed to be in Robert Philips, and not to affect any rights against the assignment.

"This saves us the necessity of further inquiry, whether these proceedings are available to the defendants as a title distinct from, and adverse to that of the firm of R. & I. Philips; but these proceedings furnish a salutary lesson to courts and juries, not to give much credence to deeds and papers, when the parties to them keep back evidence of their true character, whereby light is excluded which would otherwise explain their nature and object.

"If these proceedings were concocted by Isaac Philips and the assignees, for the purpose of injuriously affecting the creditors of R. & I. Philips, who did not assent to the assignment, they are so far void as the evidence of participation in the fraud by the assignees is sufficient on the authority of the Supreme Court of this

State, in 4 Watts, 361, to make the act of one the act of all. On their own admission, it was not a real sale and purchase—no consideration was paid, or stipulated to be paid; it was not intended to pass any title adverse to that of R. & I. Philips, bnt merely to unite what was supposed to be an outstanding legal title, to the equitable right existing in the members of the firm. That such was the object, and no other, appears not only by the admission of all the parties now, but is manifest from the conduct of the assignees, in conveying to Mr. Hanson; for they neither recited any title derived under the Orphan's Court sale, nor professed to convey any; as between the parties, therefore, it was not a binding sale, and if the object was merely what has been declared, it must operate according to the intention with which it was made, and the legal effect of what was done. Of consequence, it cannot impair the right of the members of the firm; if the assignment is valid, the sale inures to the use of the assignees, as an extinction of any right in Robert Philips, unless his heirs contest it; and if the assignment is void as to the plaintiff, the Orphan's Court sale does not affect his right, but inures to his use, as standing in the place of the defendants in the judgment under which he purchased.

"Having thus disposed of the matters set up by the plaintiff, in support of the allegation of actual fraud in the assignment, which is exclusively a question for your consideration, we proceed to notice the objections to its validity on the ground of legal fraud, which presents questions of law for the decision of the court.

"Of these objections, a very prominent one is, that the requiring a release from the creditors of the firm, as a condition precedent to their coming in for any portion of the property assigned, is illegal, and invalidates the assignment. If this were a new question, or was now open to examination in this court, we should be strongly inclined to hold the assignment void, as contrary to the policy of the law; but the Supreme Court of the United States have decided otherwise. In Brashear vs. West, they hold, that when a debtor assigned all his property for the benefit of his creditors, a stipulation for a release had been settled by the courts of this State to be valid, and that this settled construction of the law must be followed in the courts of the United States. 7 Pet. 615, 16. This decision is binding on you and us, as the established law of the case; you will consequently disregard any opinion of ours to the contrary, and consider the law to be settled in favor of the assignment on this point. Had the case in the Supreme Court of this State, in which the question was supposed to have been decided, been as closely examined, and that cause been argued as this has been, the result might have been different; it is, however, now too late to re-examine the question here; elsewhere I may feel at liberty to think otherwise; yet it may tend to shake too many titles held under such assignments, to interfere with them in any other way than by prospective legislation.

"But though you will take the law to be thus settled, when the assignment is of the whole of the debtor's property and effects, it is otherwise if any portion is fraudulently kept back from the assignment; should such be your opinion in this case, then the assignment would be void by the exaction of a release from the creditors, according to the opinion of the Supreme Court of this State, in 5 Rawle, 221, as well as the soundest principles of law. We, however, are not desirous of giving you any imperative instructions on any of the grounds of legal fraud on which this assignment is assailed, nor do we think it necessary to state them in detail; they arise on the face of the assignment,—they form a part of the plaintiff's case, which cannot be excluded from it, and must be decided by the court as questions of law, should your verdict on the evidence make it necessary.

"This case is an interesting and important one, not only to the parties concerned, as to the value of the property in dispute and what may be consequently involved, but on public considerations, arising from the nature of the transactions in evidence, their character and tendency. We think it better that the case should be decided on the questions of fact involved, reserving for future consideration any matters of law not yet stated to you, which your verdict may leave for our decision, should it be for the defendants. But though every question of fact is for your consideration solely, we are not desirous of throwing on you the whole responsibility, without expressing our opinion on the result of the evidence, not as a direction to bind, but as opinion merely, which will have such weight, and such only as you may think proper to give it. It is a painful task to view the transactions which are in evidence, in order to ascertain whether they are fraudulent; but it is a duty not to falter, and it will have a better effect, if there is a concurrence of opinion between the jury and the court on that question, than to have it in doubt as to either. A careful consideration of all the testimony in the case has led our minds to the conclusion, that there are such circumstances as will fully justify your finding the assignment to be invalid, on the ground of its being fraudulent as to creditors in point of fact."

And inasmuch as said charges and instructions, so excepted to, do not appear upon the record, the counsel for the defendants did then and there tender this bill of exceptions to the opinion of the said court, and requested the seals of the judges to be put to the same, according to the form of the statute in such case made and provided; and thereupon the aforesaid judges, at the request of the counsel for the defendants, did put their seals to this bill of exceptions, pursuant to the aforesaid statute in such case made and provided.

HENRY BALDWIN, [L. S.]
JOS. HOPKINSON. [L. S.]

And thereupon the jurors aforesaid, upon their oaths and affirmations aforesaid, respectively do say, that the aforesaid William R. Hanson, Joseph L. Moss, Isaac Philips, Joseph M. Moss and David Samuel, are guilty of the trespass and ejectment aforesaid, in manner and form as the aforesaid Richard Smith above complains against them, and assess the damages of the said Richard Smith, besides his costs and charges by him about his suit in that behalf expended, at six cents, and for those costs and charges at six cents.

Therefore, it is considered by the court here, that the said Richard Smith do recover against the said William R. Hanson, Joseph L. Moss, Isaac Phillips, Joseph M. Moss and David Samuel, his term aforesaid, yet to come, of and in the tenements aforesaid, with the appurtenances and his damages aforesaid, assessed by the jury aforesaid, and also thirty-six dollars and fifty-two cents, for his costs and charges aforesaid, by the court here awarded to the said Richard Smith with his assent, by way of increase, which said damages in the whole amount to thirty-six dollars and sixty-six cents.

UNITED STATES, *Eastern District of Pennsylvania, sct.*

I certify the foregoing to be a true and faithful copy of the record and proceedings of the Circuit Court of the United States, in and for the Eastern District of Pennsylvania, in the third circuit, in a certain action of trespass and ejectment, therein lately depending, between Richard Smith, lessee of John H. Eustace, plaintiff, and William R. Hanson, Joseph L. Moss, Isaac Phillips, Joseph M. Moss and David Samuel, defendants.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said Circuit Court at Philadelphia, [L. S.] this tenth day of January, A. D. 1842, and in the sixty-sixth year of the Independence of the said United States.

FRA. HOPKINSON,
Clk. Circt. Ct.

Filed, January 15, 1842.